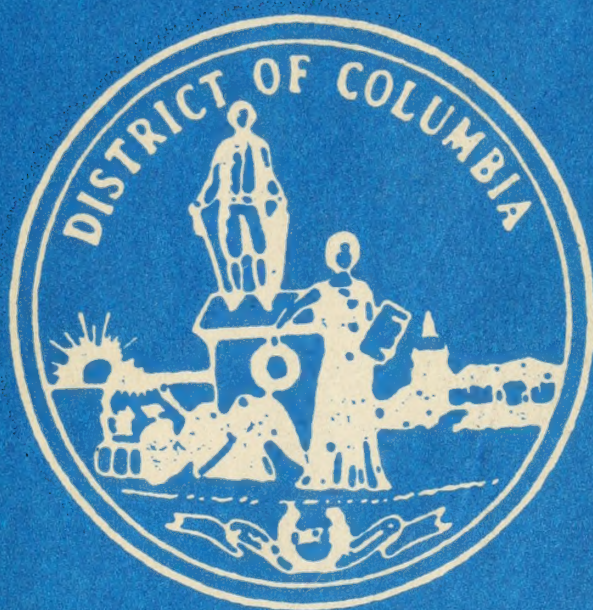


District of Columbia Code


1973 EDITION ★
SUPPLEMENT VII

1980



TITLES 1—49

TABLES AND INDEX



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DISTRICT OF COLUMBIA CODE

1973 EDITION

SUPPLEMENT VII

LAWS — January 1, 1978, to December 31, 1979

NOTES TO DECISIONS — January 1, 1978, to December 31, 1979

Prepared and Published Under Authority of the Council of the District of Columbia by
the Editorial Staff of the Publisher under the supervision of the Council's
Committee on the Judiciary.



THE MICHIE COMPANY
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CHARLOTTESVILLE, VIRGINIA
1980

DISTRICT OF COLUMBIA CODE

1973 EDITION

SUPPLEMENT VII

LAWS - January 1, 1978 to December 31, 1979

NOTES TO DECISIONS - January 1, 1978 to December 31, 1979

This supplement contains laws and decisions of the District of Columbia Council and the District of Columbia Board of Commissioners for the period January 1, 1978 to December 31, 1979.

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THE MARRIOTT CORP.
Law Offices
Washington, D.C. 20001
1980

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PREFACE

Consistent with the principles of "home rule" established in the District of Columbia Self Government and Governmental Reorganization Act (Public Law 93-198, 87 Stat. 774), the Congress of the United States divested itself of the responsibility for preparing and publishing the D.C. Code after the publication of the fifth annual supplement to the 1973 edition. By virtue of Public Law 94-386 (D.C. Code sec. 49-112), the Office of the Law Revision Counsel of the United States House of Representatives closed its books on the D.C. Code on the last day of 1977. At that time, the text of the fifth supplement was completed and the United States Government Printing Office was responsible for its printing and binding. Public Law 94-386 mandated that thereafter future editions of the D.C. Code and supplements thereto would be prepared and published under the supervision of the Council of the District of Columbia.

Pursuant to its mandate, the Council on July 19, 1977 (by Resolution 2-80) established the Advisory Commission on Codification, an appointed panel of local lawyers and a business professional. The Commission convened to provide the Council with background research and a model plan for the preparation and publication of the D.C. Code. The Advisory Commission on Codification worked intensely on this task during the summer of 1977 consulting with Mr. Edward F. Willett, Jr., Law Revision Counsel of the United States House of Representatives, printer-experts from the United States Government Printing Office, and representatives of major legal publishing companies from across the country. On September 22, 1977, the Advisory Commission on Codification filed with the Council an invaluable report which included a "blue print" for future preparation of the D.C. Code, a suggested staffing pattern and budget for accomplishment of the task, and a proposed format for the next new edition of the D.C. Code.

This noncumulative supplement to the 1973 edition of the D.C. Code is an integral part of the proposed plan of the Advisory Commission on Codification for Council preparation and publication of the D.C. Code. Sixth and seventh noncumulative supplements to the 1973 edition have been published in 1979 and 1980 in light of several factual premises. First, all consultants to as well as all members of the Advisory Commission on Codification were unanimous in the opinion that any complete new edition of the D.C. Code should be prepared and published by means of computerized magnetic tape technology instead of anachronistic standing lead typeset method used heretofore. The conversion to a computerized printing process for the D.C. Code, with full new annotations, will necessarily require more than a year of production time and substantial sums of appropriated money. Second, the Council was only recently provided the funding for staff to prepare the text of a much-needed new edition of the D.C. Code. The Advisory Commission on Codification determined that the District would save approximately \$200,000.00 by publishing a noncumulative supplement instead of a cumulative supplement. Further, in late 1979, after submitting the publishing contract for the D.C. Code for competitive bids, it was realized that a completely revised newly annotated edition of the D.C. Code would take a much longer period than was anticipated. A decision to publish another noncumulative supplement had to be made.

Supplement VII to the 1973 edition of the District of Columbia Code will serve the essential function of keeping the general public abreast of new District of Columbia statutory laws at least on a traditional annual basis until the 1981 edition of the Code is published. Supplement VII is a consolidation of the updated material contained in Supplement VI and the statutory material enacted during 1979.

The text for this supplement was prepared and printed by The Michie Company under the supervision of the staff of the Office of Codification, Committee on the Judiciary of the Council of the District of Columbia. The supplement is designed to be an interim publication which will afford the public continued access to an annual annotated up-date of the statutes of the District of Columbia. The indulgence and understanding of the reader is requested for any inconvenience caused by the requirement that the fifth cumulative supplement of the 1973 edition be used in conjunction with this supplement.

This supplement contains the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia, enacted during the second session of the Ninety-Fifth Congress by Congress and by the Council of the District of Columbia between January 1, 1978 and December 31, 1979 (except laws applicable in the District of Columbia by reason of being general and permanent laws of the United States) and annotations to decisions of the courts affecting the respective sections of the Code reported in the period from January 1, 1978 to December 31, 1979. When read in conjunction with the 1973 edition and cumulative supplement V, such annotations are up to date through the following reports:

100 S. Ct. 310; 608 F.2d 524; 478 F. Supp. 864; 407 A.2d 945

This supplement, together with the 1973 edition and cumulative supplement V hereto, establishes prima facie those laws in effect on December 31, 1979; except, that titles 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 28, having been enacted into law, establish legal evidence of the law contained in those titles.

Acts of the Council of the District of Columbia enacted on an emergency basis pursuant to section 1-146(a) of the Code are not reflected in the text of the Code because of their limited duration. However, notes captioned "Emergency Act Amendment" have been set out under various sections to provide a reference to emergency acts that amend or relate to the subject matter of the section.

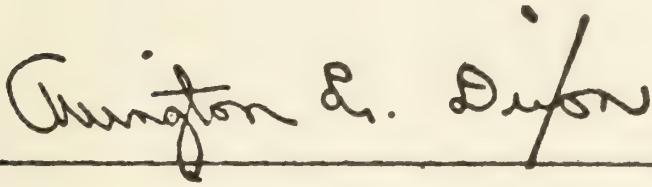
Acts of the Council, which are municipal regulations enacted in 1978 and 1979, are not included in the D.C. Code. Such regulatory law is required by D.C. Law 2-153 to be published by the Mayor in the upcoming *D.C. Municipal Regulations*.

The text of the sections contained in this volume is set out using the exact language of the law from which it was derived with the following exceptions: References to section numbers of laws have been converted to corresponding section numbers of the D.C. Code in all titles except those titles enacted into law, where the corresponding D.C. Code section numbers have been inserted in brackets. References to "this act," etc., have been converted to "this chapter," "this subchapter," etc., as appropriate. Other changes are noted in "Compiler's Changes" notes following the affected section.

"Amendment" notes, "Emergency Act Amendment" notes, "Succession in Government" notes, "Section Referred to in Other Section" notes and "Cross Reference" notes have continued to be utilized in the same manner as in the 1973 edition and Supplement V. Significant changes have been made in the other notes to the several sections of the Code. "Short Title" notes are utilized only where a law has added a new chapter or other grouping of sections which are contiguous. When included, such "Short Title" notes are set out following the first section of such new chapter or grouping. Short titles of acts which amend existing provisions of the Code have not been set out. All acts contained in the Code are included in the "Index of Acts Cited by Popular Name." "Effective Date" notes are utilized only where the effective date of a law or section of a law is different from the final adoption date which is set out in the historical citation following the text of the section of the Code. "Legislative History of Law" notes have been included to enumerate the legislative history of the law which amended, repealed or added the Code section.

Notes to decisions of the courts have been prepared to include annotations from all cases which construe, interpret, modify, clarify, explain or determine the validity or constitutionality of the several sections of the Code. Such notes have been written in as clear and succinct language as possible, and catchlines have been added to facilitate their use. Cases which speak to the sufficiency of the evidence relative to a section of the Code, but which do not construe, interpret, etc., the section, are enumerated following the affected section under the catchlines "Evidence sufficient" or "Evidence insufficient." Cases which cite a section of the Code but which do not construe, interpret, etc., or speak to the sufficiency of the evidence necessary under such section are enumerated under the catchline "Cited in." "Evidence sufficient," "Evidence insufficient" and "Cited in" notes, when appearing, will be the last notes to the affected section. Tables of cases and reverse tables of cases have been prepared in the same forms as those in the 1973 edition and Supplement V.

This supplement has been prepared and published by The Michie Company under the supervision of Gregory E. Mize, Staff Director and Counsel of the Committee of the Judiciary, Oscar M. Trelles, II, acting as Assistant Codifier and Editor for the D.C. Code, and Hartina Flournoy, acting as Assistant Editor of the D.C. Code. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staff on the Committee on the Judiciary, the staff of The Michie Company and the members of the Advisory Commission on Codification who selflessly devoted their time and their talents to designing a process to prepare and publish the D.C. Code. The members of the Commission were as follows: Harley J. Daniels, Esquire, Chairperson; Marsha Echols, Esquire; J.S. Ellenberger, Esquire; Benny L. Kass, Esquire; Robert Kenney, Esquire; John F. Mercer, Esquire; Gregory E. Mize, Esquire; George Porter, Esquire; John Prescott; John T. Rich, Esquire; Suzanne Richards, Esquire; Peter S. Ridley, Jr., Esquire; Gloria Sulton, Esquire; John A. Turner, Jr., Esquire; Edward B. Webb, Jr., Esquire; Dorothy Roth Wilson, Esquire; The Honorable Peter H. Wolf, Associate Judge of the Superior Court of the District of Columbia and Nancy Wynstra, Esquire.



/s/

Arrington Dixon
Chairman of the Council of the
District of Columbia

Washington, D.C.
February 1, 1980



/s/

David A. Clarke
Councilmember
Chairman, Committee on the Judiciary
Council of the District of Columbia

ACTS RELATING TO THE ESTABLISHMENT OF THE
DISTRICT OF COLUMBIA AND ITS VARIOUS
FORMS OF GOVERNMENTAL
ORGANIZATION

**District of Columbia Self-Government and Governmental
Reorganization Act**

Title IV—The District Charter

Part A—The Council

Subpart 1—Creation of the Council

POWERS OF THE COUNCIL

Sec. 404.

* * * * *

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 602 (c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602 (c) unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law. If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of section 602 (c).

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

| | |
|---|--|
| Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (e) by adding “unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law” at the end of the fourth sentence by substituting “become law subject to the | provisions of section 602(c)” for “be transmitted by the Chairman to the President of the United States” in the present last sentence, and by deleting the former last sentence. |
|---|--|

Subpart 2—Organization and Procedure of the Council

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

Sec. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 446 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall

be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (a) by adding “(other than an act to which section 446 applies)” after the words “Each proposed act” in the third sentence.

Title VI—Reservation of Congressional Authority

LIMITATIONS ON THE COUNCIL

Sec. 602.

* * * * *

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], any act which the Council determines according to section 412 (a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

* * * * *

(Amended October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment. Pub. L. 95-526, 92 Stat. 2023, amended subsection (c) (1) by striking out “(and with respect to which the President has not sustained the Mayor’s veto)” in the first sentence, by striking out “and every” and inserting “each” in lieu thereof in the first sentence, by adding the last clause to the first sentence and by striking out “either House is not in session” and inserting “neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days” in the second sentence.

Initiative, Referendum, and Recall Charter Amendments

Act of 1977

D.C. Law 2-46 (As amended by Emergency Act 2-94 and by P.L. 95-526)

In the Council of the District of Columbia, March 10, 1978, to amend the Charter of the District of Columbia to provide for the power of initiative, referendum, and recall.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Initiative, Referendum, and Recall Charter Amendments Act of 1977".

Sec. 2. Subject to the approval of the registered qualified electors of the District of Columbia, the District of Columbia charter is amended as follows:

"Amendment No. 1—Initiative and Referendum

"Sec. 1. Definitions

"(a) The term 'initiative' means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

"(b) The term 'referendum' means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

"Sec. 2. Process

"(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal in number to five (5) percent of the registered electors in the District of Columbia: Provided, That the total signatures submitted include five (5) percent of the registered electors in each of five (5) or more of the City's Wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular initiative or referendum petition.

"(b) (1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in sections 404 and 446 of the Home Rule Act and the President of the United States or the President of the Senate and the Speaker of the House of Representatives, shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

"(2) No act is subject to referendum if it has become law according to the provisions of section 404 of the Home Rule Act.

"Sec. 3. The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special or primary election held at least ninety (90) days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act, the District of Columbia Board of Elections and Ethics may present the referendum at that election.

“Sec. 4. If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the three hundred and sixty-five (365) days following the date of the District of Columbia Board of Elections and Ethics’ certification of the vote concerning the referendum.

“Sec. 5. If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of section 602 (c).

“Sec. 6. The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than thirty (30) days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure.

“Sec. 7. The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this amendment. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.

“Charter Amendment No. 2—Recall of Elected Public Officials

“Sec. 1. The term ‘recall’ means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

“Sec. 2. Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at-large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by ten (10) percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The ten (10) percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the ten (10) percent shall include ten (10) percent of the registered electors in each of five (5) or more of the City’s wards. The District of Columbia Board of Elections and Ethics shall hold an election within one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 2 of this act, then the District of Columbia Board of Elections and Ethics may present the recall question at that election.

“Sec. 3. The process of recalling an elected official may not be initiated within the first three hundred and sixty-five (365) days nor the last three hundred and sixty-five (365) days of his or her term of office. Nor may the process be initiated within one year after a recall election has been determined in his or her favor.

“Sec. 4. An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in

the same manner as other vacancies as provided in sections 401 (d) and 421 (c) (2) of the Home Rule Act and section 10 (a) of the District of Columbia Elections Act.

“Sec. 5. The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this amendment. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.”

Sec. 3. This act shall take effect as provided in section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Cross reference. For codification of act in the D.C. Code, see §§ 1-181 et seq. and 1-191 et seq.

Concurrent Resolutions to D. C. Law 2-46**95th CONGRESS, 2d Session****H. CON. RES. 464, Calendar No. 615**

[Report No. 95-673]

IN THE SENATE OF THE UNITED STATES**FEBRUARY 28 (legislative day, FEBRUARY 6), 1978****Referred to the Committee on Governmental Affairs****MARCH 7 (legislative day, FEBRUARY 6), 1978****Reported by Mr. EAGLETON, without amendment**

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That the Congress approves the action of the District of Columbia Council described as follows: Amendment Numbered 1 (relating to initiative and referendum) to the District of Columbia Charter, as stated in section 2 of the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved June 14, 1977 (Act 2-46), as amended by the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved November 1, 1977 (Act 2-94), and as ratified by a majority of the registered qualified electors of the District of Columbia voting in the referendum held for such ratification on November 8, 1977, such amendment having been submitted to the Congress for its approval on December 2, 1977, pursuant to section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Passed the House of Representatives February 27, 1978.

Attest:

EDMUND L. HENSHAW, JR.,
Clerk.

Passed the Senate March 10 (legislative day, February 6), 1978.

Attest:

J. S. KIMMITT,
Secretary.

95th CONGRESS, 2d Session

H. CON. RES. 471, Calendar No. 616

[Report No. 95-672]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28 (legislative day, **FEBRUARY 6**), 1978

Referred to the Committee on Governmental Affairs

MARCH 7 (legislative day, **FEBRUARY 6**), 1978

Reported by Mr. EAGLETON, without amendment

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That the Congress approves the action of the District of Columbia Council described as follows: Amendment No. 2 (relating to recall of elected officials) to the District of Columbia Charter, as stated in section 2 of the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved June 14, 1977 (Act 2-46), as amended by the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, approved November 1, 1977 (Act 2-94), and as ratified by a majority of the registered qualified electors of the District of Columbia voting in the referendum held for such ratification on November 8, 1977, such amendment having been submitted to the Congress for its approval on December 2, 1977, pursuant to section 303 of the District of Columbia Self-Government and Governmental Reorganization Act.

Passed the House of Representatives February 27, 1978.

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Clerk.

Passed the Senate March 10 (legislative day, February 6), 1978.

Attest:

J. S. KIMMITT,
Secretary.

Mayor and Chairman of the Council Transition Emergency Act of 1978

ACT 2-307

In the Council of the District of Columbia, December 4, 1978, 25 DCR 6933, to promote the orderly transfer of the executive power upon expiration of the term of office of a Mayor and the inauguration of a new Mayor, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mayor and Chairman of the Council Transition Emergency Act of 1978".

Sec. 2. Purpose of This Act. The purpose of this act is to provide for the orderly transfer of the executive power in connection with the expiration of the term of office of a Mayor and the inauguration of a new Mayor. The act authorizes appropriate actions to be taken to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the government of the District of Columbia.

Sec. 3. Services and Facilities Authorized to be Provided to the Mayor-Elect.

(a) Following upon the certification by the District of Columbia Board of Elections and Ethics of a Mayor-elect of the District of Columbia, the person who is the Mayor-elect of the District of Columbia is authorized to establish an office of transition and appoint a transition staff that shall be entitled to receive necessary and reasonable services and facilities for use in connection with preparations for assumption of official duties as Mayor. The incumbent Mayor is authorized to provide necessary and reasonable services and facilities for use in connection with preparations for assumption of official duties of the Mayor-elect, including:

(1) suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies at such place or places within the District of Columbia as the Mayor shall designate;

(2) payment of the compensation of transition office staff at rates not to exceed those prescribed in section 5332 of Title 5, United States Code: PROVIDED, That any employee of a department or agency of the Executive Branch or an employee of the Legislative Branch of the District of Columbia government may be detailed to the transition office on a reimbursable or nonreimbursable basis with the consent of the head of the appropriate department or the agency; and while so detailed such employee shall be responsible only to the Mayor-elect for performance of his duties: PROVIDED FURTHER, That any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as members of transition office staff under this subsection, other than detailed employees, shall not be held or considered to be employees of the District government;

(3) payment of expenses for the procurement of services of experts or consultants or organizations thereof for the Mayor-elect, as authorized for the head of any department by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 3109), as amended, at rates not to exceed one hundred fifty dollars (\$150) per diem for individuals;

(4) payment of travel expenses and subsistence allowances, including rental of governmental or hired motor vehicles, found necessary by the Mayor-elect, as authorized for persons employed intermittently or for persons serving without compensation by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 5703), as amended, as may be appropriate;

(5) communications services found necessary by the Mayor-elect;

(6) payment of expenses for necessary printing and binding;

(7) conveyance of all official mail matter, including airmail, sent by the Mayor-elect in connection with his preparations for the assumption of official duties as Mayor, in accordance with the provisions of the Official Correspondence Regulations (D.C. Law 1-118; D.C. Code, sec. 1-1701 *et seq.*); and

(8) payment of expenses required for the official inaugural ceremony of the Mayor.

(b) No funds for the provision of services and facilities under this act shall be expended in connection with any obligation incurred by the Mayor-elect before the day following the date of the general election held to determine the Mayor, or after the inauguration of the Mayor-elect.

(c) The term "Mayor-elect" as used in this act shall mean such person who is certified as the successful candidate for the office of Mayor by the District of Columbia Board of Elections and Ethics following the general election held to determine the Mayor. The term "incumbent Mayor" or "Mayor" as used in this act shall mean the person who holds the office of Mayor pursuant to section 421 of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 789; D.C. Code, sec. 1-161) on the date of said general election. The term "Chairman of the Council of the District of Columbia" shall mean the person who holds the office of the Chairman of the Council of the District of Columbia pursuant to section 401 of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 785; D.C. Code, sec. 1-141) on the date of said general election.

(e) In the event the Mayor-elect is the incumbent Mayor, there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this act, and any funds appropriated for such purposes shall be returned to the general fund of the District government.

Sec. 4. Services and Facilities Authorized to be Provided to the Former Mayor and the Chairman of the Council of the District of Columbia. For a period not to exceed three (3) months from the date of the expiration of his term of office as Mayor, an incumbent Mayor is authorized to receive for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this act to be provided to a Mayor-elect. Any person appointed or detailed to serve a former Mayor under the authority of this section shall be appointed or detailed in accordance with, and shall be subject to, all of the provisions of section 3 of this act applicable to persons appointed or detailed under authority of that section. The provisions of this section shall apply in like manner to a former Chairman of the Council of the District of Columbia.

Sec. 5. Authorizations of Appropriations. There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this act and such funds shall remain available during the fiscal year in which the transition occurs and the next succeeding fiscal year.

Sec. 6. Effective Date. This act shall take effect immediately upon enactment and shall remain in effect for a period not to exceed ninety (90) days, as provided for in section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act.

Constitution of the United States of America

Proposed Amendment

[Representation of the District of Columbia in Congress]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

“ARTICLE —

“SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

“SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

“SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

Historical Note. Proposed by the Ninety-fifth Congress. Passed House March 2, 1978 and passed Senate Aug. 22, 1978. Received by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Aug. 28, 1978.

Sec. 4 of the joint resolution provided: “This article shall be inoperative, unless it shall have been ratified as amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.”

Equal Rights Amendment Ratification Act of 1978

D. C. LAW 2-79

In the Council of the District of Columbia, June 13, 1978, to endorse ratification of the Equal Rights Amendment (ERA) so that no person shall be denied equality of rights under the law on account of sex.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Equal Rights Amendment (ERA) Ratification Act of 1978".

Sec. 2. The Council of the District of Columbia finds that:

(a) Women have been second class citizens legally and economically as a result of laws which bestow privileges, responsibilities, or benefits to one sex and not the other.

(b) Women are generally paid less than men for comparable work, or are underemployed relative to their abilities. The median salary for full-time female workers is currently about three thousand dollars (\$3,000) less per year than for men.

(c) Women represent fifty-one (51) percent of the population and forty-three (43) percent of the labor force, yet only eighteen (18) percent of professionals (doctors, lawyers, and judges) are women.

(d) Women are discriminated against in obtaining credit, signing mortgages, and executing contracts.

Sec. 3. (a) The Equal Rights Amendment (ERA), introduced over 50 years ago, will help assure enforcement of equal rights for all persons regardless of sex.

(b) Only thirty-five (35) states have thus far ratified the Equal Rights Amendment (ERA). States which have not ratified the Equal Rights Amendment (ERA) are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

(c) The Equal Rights Amendment (ERA) must be ratified by three (3) more states in order to have a total of thirty-eight (38) by March 22, 1979 or it will be legislatively dormant for two (2) years before the ratification process begins again.

(d) As of November 1977, legislation has been introduced in Congress to extend the ratification date for the Equal Rights Amendment (ERA) from March 1979 to March 1986.

Sec. 4. (a) The Council recognizes that formal ratification of the Equal Rights Amendment (ERA) by the District of Columbia is not possible in the Constitutional sense, but strongly believes in equal rights for all citizens. Therefore, the term "ratify" as employed herein, conforms to standard dictionary usage as "to approve or confirm; especially to give official sanction."

(b) The Council of the District of Columbia considers the Equal Rights Amendment (ERA) socially, economically, and politically viable and is concerned that the seven (7) year time limit for ratification of the Equal Rights Amendment (ERA) will restrict full consideration of the amendment by those states which have not ratified the amendment, thereby blocking its passage.

(c) Considering the time limit for ratification of the Equal Rights Amendment (ERA) and the pending resolution for an extension of that time limit, the Council of the District of Columbia, in its ratification act, would like to lead the way for additional states to consider and ratify the Equal Rights Amendment (ERA).

Sec. 5. The Council of the District of Columbia fully and unequivocally ratifies the Equal Rights Amendment (ERA) which provides that: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Sec. 6. This act shall take effect following the period provided for Congressional review of the acts of the Council of the District of Columbia in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

Emergency Act Amendments.

1978 — For temporary enactment of the "Emergency Equal Rights Amendment Convention Boycott Act of 1978," see the "Emergency Equal Rights Amendment Convention Boycott Act of 1978" (D.C. Act 2-150, Feb. 13, 1978, 24 DCR 7070.)

For temporary equal rights endorsement, see the "District of Columbia Equal Rights Amendment Emergency Ratification Act of 1978" (D.C. Act 2-151, Feb. 13, 1978, 24 DCR 7073.)

DISTRICT OF COLUMBIA CODE
1973 Edition

SUPPLEMENT VII

LAWS—January 1, 1978, to December 31, 1979

NOTES TO DECISIONS—January 1, 1978, to December 31, 1979

Part I

Government of District

- TITLE 1—ADMINISTRATION.
- TITLE 2—DISTRICT BOARDS AND COMMISSIONS.
- TITLE 3—BOARD OF PUBLIC WELFARE.
- TITLE 4—POLICE AND FIRE DEPARTMENTS.
- TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.
- TITLE 6—HEALTH AND SAFETY.
- TITLE 7—HIGHWAYS, STREETS, BRIDGES.
- TITLE 8—PARKS AND PLAYGROUNDS.
- TITLE 9—PUBLIC BUILDINGS AND GROUNDS.
- TITLE 10—WEIGHTS, MEASURES, AND MARKETS.

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CHAPTER 1.—CREATION OF DISTRICT—
GENERAL PROVISIONS

§ 1-102. District created body corporate for municipal purposes.

Section referred to in section. 1-333.1.

NOTES TO DECISIONS

Cited in *Keith v. Washington* (D.C. 1979, 401 A.2d 468).

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Subchapter I.—General Provisions

§ 1-121. Purposes.

NOTES TO DECISIONS

Core and primary purpose of home rule statute is to relieve Congress of the burden of legislating upon essentially local matters to the greatest extent possible. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 1-122. Definitions.

Section referred to in section. 1-1531.

§ 1-124. Legislative power.

Section referred to in section. 47-3301.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-127. Congressional action on certain District matters.

Section referred to in section. 1-147.

§ 1-128. Construction.

* * * * *

(b) No law or regulation which is in force on January 2, 1975, shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended

or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 1-1105a, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part. (As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(kk), 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.)

Effect of Amendments.

1979—Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the last exception at the end of subsection (b). Act Aug. 1, 1979, D.C. Law 3-14, amended section by repealing section 3205 (kk) of D.C. Law 2-139, which had deleted the last exception at the end of subsection (b).

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979

(D.C. Act 3-14, Mar. 1, 1979, 25 DCR 8244); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Second Emergency Amendments of 1979 (D.C. Act 3-45, May 29, 1979, 25 DCR 10468).

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 3-14. See note to § 1-338.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Weapons regulation not inconsistent with Act. — Section 1-227 concerning regulations relative to firearms, explosives and weapons is not inconsistent with the home

rule statute. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subchapter II.—Succession in Government

§ 1-131. Abolishment of existing government.

Section referred to in section. 1-331.1.

NOTES TO DECISIONS

Cited in *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915); *Bethel v. Jefferson*

(1978, 589 F.2d 631, 191 U.S. App. D.C. 108); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

§ 1-133. Existing statutes, regulations, and other actions.

Section referred to in section. 1-331.1.

Subchapter III.—Council

§ 1-141. Creation — Membership — Personnel — Vacancies.

Section referred to in sections. 1-194, 1-333.1, 1-1117, 2-942, 45-1681, 47-3301.

NOTES TO DECISIONS

Terms of office are staggered to ensure smooth transitions in administration. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Cited in *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 1-143. Compensation.

Section referred to in section. 1-332.2.

§ 1-144. Powers.

* * * * *

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 1-147 (c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 1-147 (c) unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law. If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of section 1-147 (c).

* * * * *

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (e) by inserting “unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law” at the end of the fourth sentence and

by striking all of the subsection after the word “shall” and inserting “become law subject to the provisions of section 1-147 (c).”
Section referred to in sections, 1-182, 1-1116, 9-603.

NOTES TO DECISIONS

Subsection (a) distinguishes between transferred legislative power and newly conferred legislative power. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
Proper exercises of power. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to § 1-226 and gun control measures pursuant to § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
The validity of the firearms control statute (§ 6-1801 et seq.) can be sustained under the District of Columbia

Council’s newly conferred power set forth in subsection (a) of this section notwithstanding the limitation on such power contained in § 1-147(a)(9), relating to any provision of any law codified in Title 22, since that limitation is merely a time constraint on the Council’s authority to make changes, modifications or amendments in local criminal statutes until such time as a local law revision commission could make a complete reevaluation and revision of the District’s criminal code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).
Cited in *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 1-146. Acts — Resolutions — Requirements for quorum.

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act (other than an act to which section 47-224 applies) shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

* * * * *

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (a) by inserting “(other than an act to which section 47-224 applies)” after the words “Each proposed act” in the third sentence.
Section referred to in sections. 1-147, 1-1532.

§ 1-147. Limitations.

* * * * *

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), any act which the Council determines according to section 1-146 (a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this chapter, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 1-127, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any act codified in titles 22, 23, or 24, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 1-127 relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

(As amended Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Pub. L. 95-526, 92 Stat. 2023, amended subsection (c) (1) by striking out “(and with respect to which the President has not sustained the Mayor’s veto)” and “and every” and inserting “each” and by adding the last clause to the first sentence and by striking out “either

House is not in session” and inserting “neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days” in the second sentence.
Section referred to in sections. 1-144, 1-185, 1-1116, 1-1119.3, 5-835, 6-1648, 6-1699, 45-1567d, 47-3301.

NOTES TO DECISIONS

Congressional intent behind subsection (a)(9) was to reserve to Congress an interest in changing the criminal code for purposes of clarification and improvement and to declare a moratorium on the Council’s new legislative authority while the District of Columbia Law Revision Commission proposed and Congress considered a complete revision of the District of Columbia Criminal Code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Limitation did not extend to subject matter. — The phrase “with respect to any provision of any law codified in Title 22” in subsection (a)(9) does not mean with respect

to the subject matter of any provision of Title 22. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Nor restrict local police power. — Congress did not intend the limitation in subsection (a)(9) to restrict the Council’s authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

The legislative history does not suggest that in enacting this section Congress intended to deter enactment of a gun control measure or of other similar exercises of police power in accordance with past local legislative practices. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Firearms control law sustained. — The validity of the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) was sustained under the District of Columbia Council's newly conferred power set forth in § 1-144(a), notwithstanding the limitation in subsection (a)(9) of this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subsection (c)(2) differs from subsection (c)(1) in that only one House's disapproving resolution is necessary to prevent an enactment on the subject matter of the Code sections designated in subsection (c)(2) from becoming effective law. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Commuter tax. — By adopting this provision, Congress intended to prevent the District from enacting a commuter

tax. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Congress' proscription in this section meant that no commuter tax could be levied on net income. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Professional tax of § 47-1574 is an invalid exercise of the City Council's legislative authority under the Home Rule Act. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Subchapter IV.—Mayor

§ 1-161. Election — Qualifications — Vacancy — Compensation.

Section referred to in sections. 1-332.2, 1-1117, 2-942, 32-342, 45-1681, 47-3101, 47-3301.

NOTES TO DECISIONS

Cited in *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915); *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48); *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

§ 1-162. Powers and duties.

Section referred to in section. 1-331.1.

§ 1-163. Municipal planning.

Comprehensive plan goals and policies. Act Mar. 3, 1979, D. C. Law 2-134, established the goals and policies of the District of Columbia as the first District element of the comprehensive plan for the National Capital.

Subchapter V.—Miscellaneous

§ 1-171. Advisory Neighborhood Commissions.

NOTES TO DECISIONS

Statutory scheme is designed to assure effective presentation of neighborhood views through the instrumentality of the Advisory Neighborhood Commission. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

"Great weight" to Commission's recommendations required. — This section requires that an independent agency of the District give "great weight" to recommendations of the Advisory Neighborhood Commission on a public policy proposal. *Wolf v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 397 A.2d 936).

Requirement that Board of Zoning Adjustment give great weight to recommendation of Commission is satisfied by specific mention of the Commission's concern in the Board's decision despite failure of the Board to mention the Commission as the source of the concern. *Wolf v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 397 A.2d 936).

Cited in *American Univ. Park Citizens Ass'n v. Burka* (D.C. 1979, 400 A.2d 737).

§ 1-171e. Elections for members of Advisory Neighborhood Commissions — Term of office — Vacancies — Change of residency by member — Resignation and removal of members.

* * * * *

(c) No member may represent a Single Member District for more than three (3) consecutive terms, except that the portion of a term served by a member as the result of a special election or as the result of an appointment to office shall not be considered in computing the three (3) consecutive terms.

* * * * *

(As amended Sept. 8, 1979, D.C. Law 3-15, § 2, 25 DCR 11003.)

Effect of Amendment.

1979 — Act Sept. 8, 1979, D.C. Law 3-15, amended section by substituting “three (3)” for “two (2)” twice in subsection (c).

Emergency Act Amendments.

1978 — For temporary addition of subsection (h), see sec. 2 of the Emergency Advisory Neighborhood Commissions Election Act of 1978 (D.C. Act 2-169, Mar. 31, 1978, 24 DCR 9259); sec. 2 of the Technical Amendments to the Emergency Advisory Neighborhood Commissions Election Act of 1978 Emergency Act (D.C. Act 2-194, May

11, 1978, 24 DCR 380); and sec. 2 of the Second Emergency Advisory Neighborhood Commissions Election Act of 1978 (D.C. Act 2-240, July 21, 1978, 25 DCR 1983).

Legislative History of Law 3-15. Law 3-15 was introduced in Council and assigned Bill No. 3-26, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 18, 1979, it was assigned Act No. 3-55 and transmitted to both Houses of Congress for its review.

§ 1-171i. Duties and responsibilities of Advisory Neighborhood Commissions.

NOTES TO DECISIONS

Intent of “great weight” provision was to assure that neighborhood views, expressed through the Advisory Neighborhood Commissions, would receive specific attention by government agencies. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

This section is a statutory method of forcing an agency to come to grips with the Advisory Neighborhood Commission’s view — to deal with it in detail. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

“Great weight” requirement in subsection (d) means that an agency must elaborate with precision its response to the Advisory Neighborhood Commission’s issues and concerns and deal with them in detail; the agency must articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

“Great weight” implies explicit reference to each Advisory Neighborhood Commission issue and concern as such, as well as specific findings and conclusions with

respect to each. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Written recommendations of Advisory Neighborhood Council. — This section does not require the Board of Zoning Adjustment to give “great weight” to oral testimony, but only to the written recommendations of the Advisory Neighborhood Council. *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 403 A.2d 291).

Effect of *Kopff* case on prior agency decisions. — For cases in which an administrative determination was made prior to *Kopff v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1977, 381 A.2d 1372), if the record reveals that the agency was cognizant of and paid attention to the pertinent and specific neighborhood issues and concerns raised by the Advisory Neighborhood Commissions, then the court will not reverse merely because the decision does not satisfy the specific prescriptions of *Kopff*. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Cited in *Spevak v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 549).

Subchapter VI.—Initiative and Referendum

§ 1-181. Definitions.

(a) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(b) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation

budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. Law 2-46 was introduced in Council and assigned Bill No. 2-2, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first, and second readings on April 5, 1977, May 3, 1977 and May 17, 1977,

respectively. Signed by the Mayor on June 14, 1977, it was assigned Act No. 2-46 and transmitted to both Houses of Congress for its review. Concurrent Resolutions 471 and 464 were approved by both Houses of Congress as required by the act.

§ 1-182. Process.

(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal in number to five (5) percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include five (5) percent of the registered electors in each of five (5) or more of the City's wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular initiative or referendum petition.

(b) (1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in sections 1-144 and 47-224 and the President of the United States or the President of the Senate and the Speaker of the House of Representatives shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

(2) No act is subject to referendum if it has become law according to the provisions of section 1-144.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Effect of Amendment.

1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting "each of" in the proviso of the first sentence of subsection (a).

Emergency Act Amendment.

1978 — For temporary amendment of subsection (a), see sec. 2 of the Extension of the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977 (D.C. Act 2-140, Jan. 30, 1978, 24 DCR 6851).

Emergency act amendments made permanent. Section 5 of act June 7, 1979, D.C. Law 3-1, provided: "The emergency amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effected by

section 2 of the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effective November 1, 1977 (Act 2-94), and the Extension of the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effective January 30, 1978 (Act 2-140), which represent the exact wording of the Charter Amendments presented to the registered qualified electors of the District of Columbia on November 8, 1977, and approved by the Congress on March 10, 1978, are made permanent."

Legislative History of Law 2-46. See note to § 1-181.

Legislative History of Law 3-1. See note to § 1-1102.

Section referred to in sections. 1-183, 1-192.

§ 1-183. Submission of measure at election.

The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special or primary election held at least ninety (90) days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182, the District of Columbia Board of Elections and Ethics may present the referendum at that election. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-184. Rejection of measure.

If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the three hundred and sixty-five (365) days following the date of the District of Columbia Board of Elections and Ethics’ certification of the vote concerning the referendum. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-185. Approval of measure.

If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia Board of Elections and Ethics, and such act shall become law subject to the provisions of section 1-147 (c). (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended section generally.
Legislative History of Law 2-46. See note to § 1-181.

§ 1-186. Short title and summary.

The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than thirty (30) days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended D.C. Law 2-46 by deleting section 6 of amendment number 1 and renumbering former section 7 as section 6.
Legislative History of Law 2-46. See note to § 1-181.

§ 1-187. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subchapter within one hundred and eighty (180) days of the effective date of this subchapter. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; October 27, 1978, Pub. L. 95-526, 92 Stat. 2023.)

Effect of Amendment.
1978 — Act Oct. 27, 1978, Pub. L. 95-526, amended D.C. Law 2-46 by renumbering former section 7 of amendment number 1 as section 6 and renumbering former section 8 as section 7.
Legislative History of Law 2-46. See note to § 1-181.

NOTES TO DECISIONS

Charter amendments were not intended to be self-executing. *Convention Center Referendum Comm. v. Board of Elections & Ethics* (D.C. 1979, 399 A.2d 550).

Subchapter VII.—Recall of Elected Public Officials

§ 1-191. “Recall” defined.

The term “recall” means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-192. Process.

Any elected officer of the District of Columbia government (except the Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at-large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by ten (10) percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The ten (10) percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued thirty (30) or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the ten (10) percent shall include ten (10) percent of the registered electors in each of five (5) or more of the City’s wards. The District of Columbia Board of Elections and Ethics shall hold an election within one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days of its receipt of a petition as provided in section 1-182, then the District of Columbia Board of Elections and Ethics may present the recall question at that election. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Effect of Amendment.

1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting “each of” in the third sentence.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 2 of the Extension of the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977 (D.C. Act 2-140, Jan. 30, 1978, 24 DCR 6851).

Emergency act amendments made permanent. Section 5 of act June 7, 1979, D.C. Law 3-1, provided: “The emergency amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effected by section 2 of the Emergency Amendments to the Initiative,

Referendum, and Recall Charter Amendments Act of 1977, effective November 1, 1977 (Act 2-94), and the Extension of the Emergency Amendments to the Initiative, Referendum, and Recall Charter Amendments Act of 1977, effective January 30, 1978 (Act 2-140), which represent the exact wording of the Charter Amendments presented to the registered qualified electors of the District of Columbia on November 8, 1977, and approved by the Congress on March 10, 1978, are made permanent.”

Legislative History of Law 2-46. See note to § 1-181.

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-193. Time limits on initiation of process.

The process of recalling an elected official may not be initiated within the first three hundred and sixty-five (365) days nor the last three hundred and sixty-five (365) days of his or her term of office. Nor may the process be initiated within one year after a recall election has been determined in his or her favor. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-194. When official removed — Filling of vacancies.

An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in the same manner as other vacancies as provided in sections 1-141 (d) and 1-161 (c) (2) and section 1-1110 (a). (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

§ 1-195. Adoption of acts to carry out subchapter.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this amendment within one hundred and eighty (180) days of the effective date of this subchapter. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978. (Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Legislative History of Law 2-46. See note to § 1-181.

CHAPTER 2.—MAYOR, COUNCIL, AND OTHER OFFICERS

| Sec. | Sec. |
|---|---|
| 1-213 to 1-213b. [Repealed.] | compensation — Definition — Operation of |
| 1-230. [Repealed.] | civil service retirement laws. |
| 1-244. Additional powers of Commissioner and Council. | 1-260. [Repealed.] |
| 1-251. Authority to grant additional compensation. | 1-262. Reception of eminent persons — Appropriation |
| 1-254. Commissioner's authority to determine | authorized. |
| honorariums for members of boards — | 1-262a. Official expenses. |
| Deposit of fees in the Treasury — Receipt of | |
| honorarium without prejudice to other | |

§§ 1-213 to 1-213b. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (zz), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-216. Offices, abolition or consolidation — Reduction of employees — Appointments to and removal from office.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made appropriations for various activities, but section 213 of Pub. L. 96-93 provided that such appropriations shall not be available, during the fiscal year ending Sept. 30, 1980, for the compensation of any person appointed as a full-time employee to a permanent, authorized position in the government of the District of Columbia during any month when the number of such employees is greater than 37,886, or as a temporary or part-time employee in the government of the District of

Columbia during any month in which the number of such employees exceeds the number of such employees for the same month of the preceding fiscal year. Section 213 also, as conditions for appropriations for full-time employees in permanent, authorized positions, set employment limitations on the maximum number of such employees in certain positions and imposed certain reporting requirements on the District of Columbia Public Schools and the District of Columbia General Hospital.

§ 1-224. Police regulations authorized in certain cases.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1978: the “District of Columbia Noise Control Act of 1977” (D.C. Law 2-53, Mar. 16, 1978, 24 DCR 5293) and the “Vendors Regulation Amendments Act of 1978” (D.C. Law

2-82, June 30, 1978, 24 DCR 9293). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

Pursuant to this section the following new regulations were adopted in 1979: The “District of Columbia Noise

Control Amendments Act of 1979" (D.C. Law 3-17, Sept. 28, 1979, 26 DCR 229). These regulations are scheduled to

be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 1-226. Regulations for protection of life, health, and property.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1978: the "Elimination of the Chest X-Ray Requirement Act of 1977" (D.C. Law 2-39, Feb. 2, 1978, 24 DCR 3175); the "Water Quality Standard Approval Act of 1977" (D.C. Law 2-68, Apr. 6, 1978, 24 DCR 6809); the "Fire Lanes and Fire Hydrants Act of 1977" (D.C. Law 2-90, June 30, 1978, 24 DCR 9759); the "Amended Eligibility Requirements for AFDC by Reason of the Employment of the Father Act of 1978" (D.C. Law 2-97, Aug. 12, 1978, 25 DCR 392); the "District of Columbia Child Development Facilities Regulation Amendment Act of 1978" (D.C. Law 2-98, Aug. 17, 1978, 25 DCR 245); the "Fire Safety Act of 1978" (D.C. Law 2-99, Aug. 17, 1978, 25 DCR 252); and the "Standards of Assistance Relating to Persons Residing in Community Residence Facilities Act of 1978" (D.C. Law 2-108, Sept. 22,

1978, 25 DCR 1453). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

Pursuant to this section the following new regulations were adopted in 1979: the "Air Quality Control Regulations Amendment No. 3 of 1978" (D.C. Law 2-133, Mar. 3, 1979, 25 DCR 3490); the "District of Columbia Mental Health Information Act of 1978" (D.C. Law 2-136, Mar. 3, 1979, 25 DCR 5055); the "Air Quality Amendment Act No. II of 1978" (D.C. Law 2-151, Mar. 6, 1979, 25 DCR 2532); and the "Community Residence Facilities Licensure Act Amendments of 1979" (D.C. Law 3-27, Oct. 18, 1979, 26 DCR 667). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

NOTES TO DECISIONS

Authority confirmed. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to this section and gun control measures pursuant to § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

In enacting § 1-147 (a) (9), which limits the authority of the District of Columbia Council to enact certain criminal legislation, Congress did not intend to restrict the Council's authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-227. Regulations relative to firearms, explosives, and weapons.

NOTES TO DECISIONS

Section is not inconsistent with home rule statute. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Authority confirmed. — Legislative power transferred from the predecessor District of Columbia Council to the new Council by the home rule statute necessarily included the function of enacting police regulations pursuant to § 1-226 and gun control measures pursuant to this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

In enacting § 1-147 (a) (9), which limits the authority of the District of Columbia Council to enact certain criminal

legislation, Congress did not intend to restrict the Council's authority to enact municipal ordinances and local police and regulatory schemes. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Firearms control law valid. — The Firearms Control Regulations Act (§ 6-1801 et seq.) constitutes a legitimate exercise of the authority vested in the District of Columbia Council by this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 1-230. Repealed. Oct. 18, 1979, D.C. Law 3-30, § 14 (a), 26 DCR 765.

Legislative History of Law 3-30. See note to § 6-2401.

§ 1-244. Additional powers of Commissioner and Council.

* * * * *

(i) *Purchase and sale of maps and regulations — District of Columbia Publications Fund — Issuance without charge — Delegation of authority — Payment of cost.* The Commissioner of the District of Columbia is authorized and empowered within his discretion—

(1) To purchase and sell maps and to sell copies of and subscriptions to the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations, including binders therefor (hereinafter referred to as "material"), at such prices as the Mayor or his designated agent may from time to time determine to be necessary to approximate the cost thereof, including the cost of distribution. All receipts from

the sale of such material on hand as of the effective date of this amendment, shall be deposited into a fund which is hereby established, to be known as the “District of Columbia Publications Fund”, which fund shall be available without fiscal year limitation for all necessary costs connected with the procurement, publication, and distribution of such material, including postage. There is hereby authorized to be appropriated from the revenues of the District of Columbia \$50,000 to provide working capital, which sum shall be deposited to the credit of the fund established by this section, and receipts from the sale of such material shall likewise be deposited to the credit of such fund: Provided, that as soon as practicable after the close of each fiscal year, after provision has been made for payment of all obligations then incurred, the amount in such fund in excess of \$50,000 shall be deposited to general revenues of the District of Columbia.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-153, § 5, 25 DCR 6960.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-153, amended section by substituting “and to sell copies of and subscriptions to the District of Columbia Statutes-at-Large, the District of Columbia Register, and the District of Columbia Municipal Regulations” for “and regulations and parts of regulations issued by any agency of the government of the District of Columbia and amendments thereof” and “Mayor” for “Commissioner” in the first sentence of paragraph (1) of subsection (i).

Legislative History of Law 2-153. See note to § 1-1611.
New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the “District of Columbia Electrical Licensing and Bonding Regulations Amendment Act of 1979” (D.C. Law 3-12, July 12, 1979, 25 DCR 10258). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 1-251. Authority to grant additional compensation.

Authority is hereby granted to the Secretary of the Interior and the President of the United States, in their discretion, to grant additional compensation at rates not to exceed those prevailing without regard to the provisions of section 3679 of the Revised Statutes, as amended (31 U.S.C. § 665), additional compensation at rates not to exceed those prevailing in the District of Columbia for similar or comparable employment to each employee in or under the National Capital Parks and the Executive Mansion Grounds, whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code relating to the classification of government employees and related matters, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1952. (Oct. 25, 1951, 65 Stat. 637, ch. 560, § 2; Mar. 3, 1979, D.C. Law 2-139, § 3205 (aaa), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “Commissioner of the District of Columbia and to other wage-fixing authorities of the municipal government of the District of Columbia, the” preceding “Secretary” near the beginning of the section and “municipal government of the District of Columbia” preceding “National” near the middle of the section, and

by removing the brackets surrounding “relating to the classification of government employees and related matters” near the end of the section.
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-254. Commissioner’s authority to determine honorariums for members of boards —
Deposit of fees in the Treasury — Receipt of honorarium without prejudice to
other compensation — Definition — Operation of civil service retirement laws.

* * * * *

(d) As used in sections 1-254 to 1-259, “honorarium” means the fee, per diem, compensation, or any amount paid to any member of any such board, commission, or committee for service as such member. Payments made under Sections 1-254 to 1-259 shall be governed by the provisions of section 1-341.8.

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (oo), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting the present second sentence for the former second sentence in subsection (d).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-260. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (iii), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-262. Reception of eminent persons — Appropriation authorized.

There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, not to exceed \$10,000 in any fiscal year for such expenses as the Council of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment of officials of foreign, State, local, or Federal Governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia; and the certificate of the Council shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (July 11, 1947, 61 Stat. 314, ch. 231, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205 (b), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “and without reference to section 1-808; or the civil-service laws” following “services” near the middle of the section.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-262a. Official expenses.

The Mayor of the District of Columbia, the Chairman and Members of the Council of the District of Columbia, the Superintendent of Schools, and the Chief Executive Officer of the University of the District of Columbia are each hereby authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462.)

Effect of Amendment.

1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by rewriting the first sentence.

Emergency Act Amendment.

1978 — For temporary amendment of first sentence of section, see sec. 2 of the Official Purposes Funds Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 24 DCR 390).

Legislative History of Law 2-111. Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

CHAPTER 2A.—DELEGATE TO THE HOUSE OF REPRESENTATIVES

§ 1-291. Delegate to the House of Representatives from the District of Columbia.

NOTES TO DECISIONS

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

CHAPTER 3.—OFFICERS AND EMPLOYEES GENERALLY

| | |
|---------------------------|---------------------------|
| Sec. | Sec. |
| 1-310a. [Repealed.] | 1-316. [Repealed.] |
| 1-313, 1-314. [Repealed.] | 1-320, 1-321. [Repealed.] |

§ 1-301. Corporation counsel — Duties.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 1-310a. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (z), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-313. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (ii), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-314. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (jj), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-314b. Designation by Mayor of Dr. King’s Birthday as holiday.

Section referred to in section. 1-362.4.

§ 1-316. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (bbb), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-320. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (ww), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

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Section referred to in sections. 1-337.1, 1-362.4.

§ 1-321. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (aa), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

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Subchapter I. — Findings and Purpose

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-331.1. Findings.

The Council of the District of Columbia finds that:

(a) The provisions of section 1-162 (3) require that the Council of the District of Columbia adopt a comprehensive merit system of personnel management for the Government of the District of Columbia before January 2, 1980.

(b) The provisions of sections 5-713 note, 36-701 note, 1-162 (3), 1-131 note and 1-133 (c) guarantee certain benefits to incumbent employees of the District of Columbia government and those persons transferred to the District of Columbia government from the formerly independent National Capital Housing Authority, District of Columbia Redevelopment Land

Agency and the District of Columbia Department of Manpower including, without limitation, benefits relating to appointments, promotions, discipline, separation, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance and veterans preference.

(c) The present authority for filling positions within the District of Columbia government is fragmented, both between the United States Civil Service Commission and the District of Columbia government, and among various subdivisions of the District government, such as, the District of Columbia Board of Education, the Trustees of the University of the District of Columbia and other independent boards and commissions.
(Mar. 3, 1979, D.C. Law 2-139, § 102, 25 DCR 5740.)

Legislative History of Law 2-139. Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Mar. 3, 1979, D.C. Law 2-139, provided: "That this act may be cited as the 'District of Columbia Government Comprehensive Merit Personnel Act of 1978.'"

Section referred to in section. 1-337.3.

§ 1-331.2. Purpose.

(a) The Council of the District of Columbia declares that it is the purpose and policy of this chapter to assure that the District of Columbia government shall have a modern flexible system of public personnel administration, which shall:

- (1) provide for increasingly autonomous control over personnel administration by the District of Columbia government;
- (2) create uniform systems for personnel administration among the executive departments and agencies reporting directly to the Mayor of the District of Columbia and among independent agencies, boards and commissions in the District of Columbia government;
- (3) create separate personnel management systems for educational employees of the District of Columbia Board of Education and the University of the District of Columbia;
- (4) insure the efficient administration of this personnel system;
- (5) establish impartial and comprehensive administrative or negotiated procedures for resolving employee grievances;
- (6) provide for a positive policy of labor-management relations including collective bargaining between the District of Columbia government and its employees; and
- (7) establish the means to recruit, select, develop and maintain an effective and responsive work force consistent with merit principles.

(b) The Career and Educational Services established in subchapters VIII and VIIIA of this chapter shall follow merit principles such as the following:

- (1) recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including open and competitive consideration of qualified applicants for initial appointment;
- (2) providing equitable and adequate compensation;
- (3) training employees, as needed, to assure high-quality performance;
- (4) retaining employees on the basis of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected; and
- (5) assuring, as provided in this chapter, fair treatment of applicants and employees in all aspects of employment without regard to political affiliation, race, color, national origin, sex, religious belief, age, marital status, personal physical appearance, sexual orientation or preference, family responsibilities, physical handicap or developmental disability. A proper regard shall be accorded all rights of privacy and other constitutionally protected rights of citizens.

(c) Employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office. (Mar. 3, 1979, D.C. Law 2-139, § 103, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter II. — Coverage; Status of Present Employees; Retention of Existing Personnel Rights and Benefits

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-332.1. Coverage; exceptions.

Unless specifically exempted from certain provisions, this chapter shall apply to all employees of the District of Columbia government, except the chief judges and associate judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the nonjudicial personnel of said courts. (Mar. 3, 1979, D.C. Law 2-139, § 201, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Washington convention center. Section 9-610 provides that the District of Columbia Government Comprehensive

Merit Personnel Act of 1978 shall not apply to employees of the Washington convention center.

§ 1-332.2. Limited application of this chapter.

The provisions of this chapter shall apply to the following employees of the District of Columbia government only to the following extent:

(a) The Mayor and each Member of the Council of the District of Columbia are entitled to pay, as provided in section 1-341.9, in accordance with the provisions of sections 1-161 (d) and 1-143 (a). The Mayor and each Member of the Council of the District of Columbia may participate in personnel benefit programs authorized in subchapters XXI, XXII, XXIII and XXVI of this chapter, and are covered by the provisions of subchapters XVIII, XXV, XXIX, XXX and XXXI of this chapter, and section 1-334.8.

(b) The President and each Member of the District of Columbia Board of Education are entitled to pay, as provided in section 1-341.10, and may participate in personnel benefit programs authorized in subchapters XXI, XXII, XXIII, and XXVI of this chapter. The President and each Member of the District of Columbia Board of Education are covered by the provisions of subchapters XVIII, XXV, XXIX, XXX, XXXI of this chapter, and section 1-334.8.

(c) Unless pay is set in accordance with other provisions of this chapter, each member of a board or commission who is paid under the authority of a provision of subchapter XI of this chapter, other than section 1-341.8, is entitled to pay as provided in section 1-341.8, and is covered by the provisions of subchapters XVIII, XXIII, XXV, XXIX, XXX, XXXI of this chapter, and section 1-334.8. Under rules and regulations issued by the Mayor, each member of a board or commission may be covered by the provision of subchapters XXI, XXII and XXVI of this chapter.

(d) Each person employed as an educational employee of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of section 1-332.3.

(Mar. 3, 1979, D.C. Law 2-139, § 202, 25 DCR 5740.)

Emergency Act Amendment.

1979—For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-334.4.

§ 1-332.3. Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

(a) Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of

this chapter with the exception of subchapters VIII, IX (except to the extent provided therein) and X of this chapter. Subchapter VIIIA of this chapter will only apply to such educational employees.

(b) Educational employees of the Board of Trustees of the University of the District of Columbia shall not be governed by the provisions of section 1-339.1 relating to the development of job descriptions in consultation with the Mayor. The Board of Trustees of the University of the District of Columbia shall develop policies on classification, appointment, promotion, retention and tenure of employees consistent with the educational mission of the University and in accordance with sound policies and practices of land-grant universities which meet the standards established by the College and University Personnel Association. Additionally, educational employees shall not be covered by the following subchapters: VIII, X, XI (except as it provides for pay setting), XIII, XIV, XIX and XXIV of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 203, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.2, 1-334.4, 1-334.6, 1-338.2.

§ 1-332.4. Status of employees employed by the District of Columbia government on the date that this chapter becomes effective as provided in section 1-366.1; retention of existing rights.

(a) Persons employed by the District of Columbia government serving on the date that this chapter becomes effective, as provided in section 1-366.1, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of personnel law and rules and regulations in force on the date immediately prior to the date that this chapter becomes effective as provided in section 1-366.1.

(b) All provisions of existing contracts between the District government and labor organizations shall be honored until their expiration.

(c) On January 1, 1980, all persons employed by the District of Columbia government, including those persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in section 1-366.1, shall automatically transfer into the appropriate personnel system as established pursuant to subchapters VIII, VIIIA of this chapter or section 1-339.4. The classification of and compensation for the position assumed upon transfer, and the rights and benefits inhering in such position, shall be at least equal to the classification, compensation, rights and benefits associated with the position from which said employee is transferred. The rights and benefits protected under this subsection shall be only those applicable to said employees under the provisions of personnel laws and rules and regulations in force on December 31, 1979: Provided however, that no employee covered under the provision of this subsection shall be reduced in pay except as provided in subchapter XXIV of this chapter.

(d) After January 1, 1980, persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in section 1-366.1 and who transfer into the appropriate personnel system, pursuant to subsection (c) of this section, shall be governed by the provisions of this chapter, with the exception of subsection (e) of section 1-338.1 and subsection (d) of section 1-338.2.

(e) Employees hired on or after the date that this chapter becomes effective as provided in section 1-366.1 shall be governed by all the provisions of this chapter without exception. (Mar. 3, 1979, D.C. Law 2-139, § 204, 25 DCR 5740.)

Emergency Act Amendment.

1979—For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.5, 1-332.6, 1-333.1, 1-338.1, 1-347.16.

§ 1-332.5. Development of new personnel system.

In accordance with the provisions of section 1-332.4, the Mayor and each personnel authority shall cause the development of unified systems for all employees of the District of Columbia government. Each employee of the District of Columbia government employed on December 31, 1979, shall be guaranteed no reduction of current pay and benefits except as provided in subchapter XXIV of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 205, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-332.6. Supersession provisions; effectiveness of collective bargaining on compensation matters.

On the date that the provisions of section 1-347.16 become operational and negotiations commence concerning compensation matters, all employees of the District government in the appropriate bargaining units under section 1-347.16, including those described in section 1-332.4, shall be subject to the procedures and provisions for establishing compensation provided in section 1-347.16: Provided, however, that no employee subject to the provisions of section 1-332.4 shall be reduced in actual pay, except in accordance with the provisions of subchapter XXIV of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 206, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-341.13.

Subchapter III.—Definitions

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-333.1. Definitions.

For the purpose of this chapter unless otherwise required by the context:

(a) The term “agency” means any unit of the District of Columbia government required by law, by the Mayor of the District of Columbia or by the Council of the District to administer any law, rule or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District of Columbia government created by the reorganization of one or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

(b) On the date that this chapter becomes law, the terms “boards and commissions” shall include the following:

- Board of Accountancy
- Commission on Aging
- Alcoholic Beverage Control Board
- Board of Appeals and Review
- Apprenticeship Council
- Board of Examiners and Registrars of Architects
- Commission on Arts and Humanities
- Board of Examiners of Barbers
- District of Columbia Boxing and Wrestling Commission
- Board of Cosmetology
- Board for the Condemnation of Insanitary Buildings
- Contract Appeals Board
- Criminal Justice Coordinating Board
- Board of Dental Examiners

Developmental Disabilities Planning Council
Educational Institution Licensure Commission
District of Columbia Board of Elections and Ethics
Electric Board
Board of Registration for Professional Engineers
Board of Equalization and Review
Mayor's Committee on Food, Nutrition and Health
Board of Funeral Directors and Embalmers
D.C. General Hospital Commission
Board of Trustees of Group Hospitalization, Inc.
Hackers' License Appeal Board
Commission on Licensure to Practice the Healing Arts
Historical Records Advisory Board
Board of Labor Relations
Commission on Latino Community Development
District of Columbia Law Revision Commission
District of Columbia Advisory Council for the Legal Services Corporation
Board of Library Trustees
Minimum Wage and Industrial Safety Board
Minority Business Opportunity Commission
National Capital Housing Authority Advisory Board
District of Columbia Neighborhood Reinvestment Commission
Board of Optometry
Board of Parole
Public Service Commission
Board of Trustees of the People's Involvement Corporation
Board of Pharmacy
Physical Therapists Examining Board
Board of Plumbing
Board of Podiatry Examiners
Police Complaint Review Board
Police and Firemen's Retirement and Relief Board
Board of Police and Fire Surgeons
Commission on Postsecondary Education
Practical Nurses Examining Board
Board of Psychologist Examiners
Board of Trustees of the District of Columbia Public Defender Service
Public Information Review Board
Board for Removal from Office of Public Notaries
Real Estate Commission
Community Recreation Advisory Board
District of Columbia Redevelopment Land Agency
Refrigeration and Air Conditioning Board
Nurses' Examining Board
Rental Accommodations Commission
Statewide Health Coordinating Council
Steam and Other Operating Engineers' Board
Citizens' Traffic Board
District Unemployment Compensation Board
Board of Trustees for United Planning Organization
Board of Trustees of the University of the District of Columbia
Board of Examiners in Veterinary Medicine
Commission for Women

Board of Zoning Adjustment
Zoning Commission

and shall include other boards and commissions established by the Mayor or the Council after March 3, 1979, but does not include intergovernmental organizations or those associated with the judiciary or interagency committees.

(c) The term "career service" means positions in the District of Columbia government as provided for in subchapter VIII of this chapter and section 1-332.4.

(d) The term "Council" means the Council of the District of Columbia, created pursuant to section 1-141.

(e) The term "District" means the District of Columbia government (D.C. Code, sec. 1-102).

(f) The term "educational employee" means an employee of the District of Columbia Board of Education or of the Board of Trustees of the University of the District of Columbia, except persons employed in any of the following types of positions:

(1) clerical, stenographic or secretarial positions;

(2) custodial, building maintenance, building engineer, general maintenance or general engineering positions;

(3) bus drivers and other drivers involved in the transportation of persons, equipment, materials or inventory;

(4) cooks, dieticians and other positions involved in direct planning, preparation, service and conditions of preparation and service of food;

(5) technicians involved in the operation or maintenance of machinery, vehicles, equipment or the processing of materials and inventory; or

(6) positions the major duties in which consist of the supervision of employees covered in paragraphs (1) through (5) of this definition: Provided, however, that this paragraph shall not be deemed to include heads of academic units at the University of the District of Columbia.

(g) The term "employee" means, except when specifically modified in this chapter, an individual who performs a function of the District government and who receives compensation for the performance of such services.

(h) The term "excepted service" means positions in the District of Columbia government as provided for in subchapter IX of this chapter.

(i) The term "executive service" means any subordinate agency head whom the Mayor is authorized to appoint in accordance with subchapter X of this chapter.

(j) The term "grievance" means any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees.

(k) The term "head" means the highest ranking executive official of an agency.

(l) The term "holidays" means any day established as a legal holiday pursuant to subchapter XII of this chapter.

(m) The term "independent agency" means any board or commission of the District of Columbia government not subject to the administrative control of the Mayor including, but not limited to, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the Board of Library Trustees, the Armory Board, the Board of Elections and Ethics, the Public Service Commission, the Zoning Commission for the District of Columbia, the Public Employee Relations Board and the Office of Employee Appeals. For the purposes of this chapter, the Council of the District of Columbia, the Superior Court of the District of Columbia, and the District of Columbia Court of Appeals shall be considered independent agencies of the District of Columbia. For the purposes of subchapter XXVIII of this chapter, the Washington Metropolitan Area Transit Commission shall be considered an independent agency of the District.

(n) The term "personnel authority" means an individual with the authority to administer all or part of a personnel management program as provided in subchapter IV of this chapter.

(o) The term "resident" means any person who is a domiciliary of the District of Columbia and who throughout his or her employment by the District maintains a place of abode in the District of Columbia as his or her actual, regular and principal place of occupancy.

(p) The term “standard” means any criterion, guideline or measure established by appropriate authority for the purpose of making objective comparisons or determinations for such purposes including, but not limited to, the classification of positions, establishment of pay, evaluation of qualifications and appraisal of work performance.

(q) The term “subordinate agency” means any agency under the direct administrative control of the Mayor, including the following on the date of adoption of this chapter:

- (1) Office of the Corporation Counsel (Reorganization Order 50);
 - (2) Department of Corrections (Organization Order 7);
 - (3) Department of Economic Development (1 App., Reorganization Order 55);
 - (4) Department of Environmental Services (Commissioner’s Order 71-255);
 - (5) Department of Finance and Revenue (Commissioner’s Order 69-96);
 - (6) Fire department (Reorganization Order 6);
 - (7) Department of General Services (Commissioner’s Order 69-96);
 - (8) Department of Housing and Community Development (Reorganization Plan 3 of 1975);
 - (9) Department of Human Resources (Commissioner’s Order 70-83);
 - (10) Department of Insurance (Reorganization Order 43);
 - (11) District of Columbia Department of Labor (Reorganization Plan 1 of 1978);
 - (12) Metropolitan Police Department (D.C. Code, sec. 4-101 et seq.);
 - (13) Minimum Wage and Industrial Safety Board (Reorganization Order 36);
 - (14) Public Affairs Office (Organization Order 2);
 - (15) Recorder of Deeds (Organization Order 101);
 - (16) Department of Recreation (Organization Order 10);
 - (17) Office of the Surveyor (Reorganization Order 27);
 - (18) Department of Transportation (Reorganization Plan 2 of 1975);
 - (19) Office of Budget and Management Systems (Commissioner’s Order 74-264);
 - (20) Office of Emergency Preparedness (Commissioner’s Order 74-261);
 - (21) Office of Consumer Protection (D.C. Code, title 28 appendix);
 - (22) Office of Human Rights (Commissioner’s Order 71-224);
 - (23) Municipal Planning Office (Commissioner’s Order 74-264);
 - (24) Personnel Office (Organization Order 2);
 - (25) Office of the Secretariat (Organization Order 2);
 - (26) Office on Latino Affairs (D.C. Code, sec. 6-1911);
 - (27) Office on Aging (D.C. Code, sec. 6-1711);
 - (28) Board of Appeals and Review (Organization Order 112);
 - (29) Board of Parole (Organization Order 6);
 - (30) District Unemployment Compensation Board (Reorganization Order 37);
 - (31) Commission for Women (Organization Order 38);
 - (32) Office of Business and Economic Development (D.C. Code, sec. 1-1352);
- and shall include other subordinate agencies established by the Mayor or the Council after March 3, 1979. (Mar. 3, 1979, D.C. Law 2-139, § 301, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter IV.—Organization for Personnel Management

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-334.1. Policy.

It is the intent of the Council that the District's personnel management system provide for equitable application of appropriate rules or regulations among all agencies. Further, it is the intent of the Council that the rules, regulations and standards issued by the personnel authorities under this chapter should be as flexible and responsive as possible and reflect an awareness of innovation in the fields of modern personnel management and public administration. (Mar. 3, 1979, D.C. Law 2-139, § 401, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-334.2. Office of Personnel.

(a) There is established an Office of Personnel, the head of which is the Director of Personnel.

(b) The Director of Personnel shall be appointed by the Mayor in accordance with the provisions of subchapter X of this chapter.

(c) To be eligible for appointment as Director of Personnel a person shall have demonstrated, through his or her knowledge and experience, the ability to administer a public personnel program of the size and complexity of the program established by this chapter.

(d) The Mayor may delegate his or her authority under this chapter, in whole or in part, to the Director of Personnel. (Mar. 3, 1979, D.C. Law 2-139, § 402, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-334.3. Authority of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia may delegate their duties and functions under this chapter, in whole or in part, to employees under their respective jurisdictions. (Mar. 3, 1979, D.C. Law 2-139, § 403, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-334.4.

§ 1-334.4. Issuance of rules and regulations affecting personnel for employees of the District of Columbia.

(a) The Mayor shall issue rules and regulations to implement the provisions of subchapters II, IV, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII and XXXIV of this chapter, for all employees of the District of Columbia, except as may be otherwise provided in this subchapter.

(b) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapter VIIIA of this chapter.

(c) (1) The District of Columbia Board of Education shall issue rules and regulations to implement the provisions of subchapters VII, XIII, XIX, XXIV and XXVII of this chapter, and sections 1-332.3, 1-334.3 and 1-341.11 for educational employees under its respective jurisdictions.

(2) The Board of the University of the District of Columbia shall issue rules and regulations to implement the provisions of subchapters VII and XXVII of this chapter, and sections 1-332.3, 1-334.3 and 1-341.11 for educational employees under its jurisdiction.

(d) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapters XII, XIV, XVI, XVII, XXV and XXXI of this chapter, and section 1-332.2 (b) for all employees under their respective jurisdictions.

(e) The Public Employee Relations Board shall issue rules and regulations to carry out its authority under subchapters V and XVII of this chapter.

(f) The Office of Employee Appeals shall issue rules and regulations to carry out its authority under subchapter VI of this chapter.

(g) The District of Columbia Board of Elections and Ethics shall issue rules and regulations to carry out its authority under subchapter XXV of this chapter.

(h) Except where proscribed by law or issued under the authority of subsections (e), (f) or (g) of this section, rules and regulations issued pursuant to this chapter shall not be a bar to collective bargaining during the negotiation process with an exclusively recognized labor organization. (Mar. 3, 1979, D.C. Law 2-139, § 404, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-334.5, 1-366.1.

§ 1-334.5. Issuance of rules and regulations.

Rules and regulations proposed or issued under section 1-334.4 and amendments thereto shall be issued according to the provisions of section 1-1505: Provided, however, that when such rules and regulations are issued under the authority of section 1-1505 (a), the thirty (30) day time period required by that section shall be extended to sixty (60) days. (Mar. 3, 1979, D.C. Law 2-139, § 405, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-334.6. Personnel authority.

(a) The implementation of the rules and regulations shall be undertaken by the appropriate personnel authority for employees of the District.

(b) For the purposes of subsection (a) of this section, the personnel authority for District of Columbia government means the Mayor for all employees, except as provided in section 1-332.3 and as follows:

(1) for non-educational employees of the District of Columbia Board of Education, the personnel authority is the District of Columbia Board of Education;

(2) for non-educational employees of the Board of Trustees of the University of the District of Columbia, the personnel authority is the Board of Trustees of the University of the District of Columbia;

(3) for employees of the Council of the District of Columbia, the personnel authority is (A) the Chairman of the Council for all central staff of the Council. For the purposes of this subchapter, the term “central staff of the Council” refers to those employees described in section 1-339.3 (a) (3) except those assigned to an individual member of the Council: Provided, however, that the Secretary, General Counsel, and Legislative Counsel to the Council shall be appointed by the Council of the District of Columbia according to its Rules of Procedure and Organization; and (B) each Member of the Council for his or her personal and committee staff: Provided, however, that the respective Committees of the Council shall approve the appointment of each committee staffperson. The Chairman and each Member of the Council shall utilize the Secretary to the Council for the actual transaction of all personnel matters for employees of the Council;

(4) for employees of the District of Columbia Board of Elections and Ethics, the personnel authority is the District of Columbia Board of Elections and Ethics: Provided, however, that this authority shall not apply to the Director of Campaign Finance (D.C. Code, sec. 1-1151). For employees in the Office of Director of Campaign Finance, the personnel authority is the Director of Campaign Finance;

(5) for employees of the Public Service Commission, the personnel authority is the Public Service Commission: Provided, however, that the People’s Counsel (D.C. Code, sec. 43-205) shall be appointed according to law and for employees under the direct administrative control of the People’s Counsel, the personnel authority is the People’s Counsel;

(6) for the Executive Director of the Public Employee Relations Board, created by subchapter V of this chapter, the personnel authority is the Public Employee Relations Board and for all other employees of the Board, the personnel authority is the Executive Director of the Board;

(7) for the Chief Hearing Examiner of the Office of Employee Appeals created by subchapter VI of this chapter, the personnel authority is the Office of Employee Appeals and for all other employees of the Office, the personnel authority is the Chief Hearing Examiner;

(8) for employees of the Office of District of Columbia Auditor (D.C. Code, sec. 47-120), the personnel authority is the Auditor of the District of Columbia;

(9) for employees of the District of Columbia General Hospital (D.C. Code, sec. 32-1301 et seq.), the personnel authority is the District of Columbia General Hospital Commission;

(10) for employees of the District of Columbia Armory Board (D.C. Code, sec. 2-1702) the personnel authority is the Armory Board;

(11) for employees of the District of Columbia courts, the personnel authority is the Superior Court of the District of Columbia, the District of Columbia Court of Appeals, or the Administrative Officer of the District of Columbia Courts for employees under their respective jurisdictions; and

(12) for employees of the District of Columbia Board of Library Trustees, the personnel authority is the Board of Library Trustees.

(Mar. 3, 1979, D.C. Law 2-139, § 406, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-334.7. Transfer of personnel functions.

All positions and employees of the District who spent fifty percent (50%) or more of their regular duty hours on January 1, 1976, or at any time since that date performing personnel functions, are transferred to the Office of Personnel unless properly reclassified by the District of Columbia Office of Personnel, except as provided herein. The provisions of this section shall not apply to employees in positions within the independent agencies. All property and funds associated with those positions and employees transferred to the Office of Personnel are transferred thereto as provided in subchapter XXXVI of this chapter unless prohibited by statute. Any employee found to be superfluous to the needs of the Office of Personnel shall be separated from his or her position in accordance with appropriate reduction-in-force procedures as provided in subchapter XXIV of this chapter. The Mayor may authorize the reassignment of such employees as is appropriate. (Mar. 3, 1979, D.C. Law 2-139, § 407, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

§ 1-334.8. Oath of office.

Each personnel authority of an agency of the District shall designate a person to administer the oath of office to each employee of that agency. The oath shall be as follows:

"I, (employee's name) do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office of which I am about to enter."

(Mar. 3, 1979, D.C. Law 2-139, § 408, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-332.2.

Subchapter V. — Public Employee Relations Board

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-335.1. Establishment of Board.

(a) There is established a Public Employee Relations Board (hereinafter referred to in this subchapter as the “Board”) consisting of five (5) members, not otherwise in the employment of any labor organization granted exclusive recognition under this chapter or the District of Columbia government: Except, that members of the Board of Labor Relations established by Commissioners’ Order 70-229 may be appointed to the Public Employee Relations Board. The members shall be appointed by the Mayor within sixty (60) days after the effective date of this subsection.

(b) The Mayor shall select members of the Board from persons who through their experience have demonstrated an expert knowledge of the field of labor relations and who possess the integrity and impartiality necessary to protect the public interest and the interests of the District of Columbia government and its employees. Every effort shall be made to select members who have experience in public sector labor relations and preference shall be given to such persons in the Mayor’s appointments to the Board.

(c) The members of the Board shall be selected by the Mayor in the following manner:

(1) One (1) member shall be chosen from those persons whose names appear upon lists proposed by labor organizations each of which has been granted exclusive recognition for at least two hundred fifty (250) District government employees at the time that the Mayor is making his or her selection;

(2) One (1) member shall be chosen from a list of at least two (2) names proposed by an ad hoc committee appointed by the Mayor representing agency heads within the District government;

(3) Three (3) neutral members, of whom one (1) shall be designated by the Mayor as Chairperson, shall be public members.

(d) The term of office for each member is three (3) years: Except, that members first appointed to the Public Employee Relations Board shall serve the following terms: (1) two (2) members shall serve for one (1) year; (2) two (2) additional members shall serve for two (2) years; and (3) the Chairperson shall serve a three (3) year term. The Mayor shall designate the term of each member at the time of his or her appointment.

(e) The Mayor may remove any member of the Board who engages in any activity prohibited by subsection (g) of this section or for repeated failures to attend Board meetings, and appoint a new member in accordance with the provisions of subsection (c) of this section to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity, he or she shall initiate an action in the Superior Court of the District of Columbia in accordance with the provisions of section 16-3521 et seq. to remove such member.

(f) Any vacancy occurring in the Board shall be filled within forty-five (45) days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(g) A member of the Board who:

(1) violates the provisions of subsection (a) of this section; or

(2) engages in a conflict of interest in violation of the provisions of subchapter XVIII of this chapter; or

(3) is convicted for an offense against the labor relations laws of the United States or of the District of Columbia, or for any other crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offenses, shall be removed from office as provided in this section.

(h) The procedure provided in subsection (c) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least thirty (30) days prior to the expiration. If a vacancy occurs during a term due to removal, resignation or death of a member, the new appointee's term of office shall be for the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsection (c) of this section. No person shall serve for more than two (2) consecutive terms.

(i) If at any time any matter comes before the Board in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of said matter.

(j) Each member of the Board is entitled to compensation as provided in section 1-341.12. Each member of the Board is expected to attend the regularly scheduled meetings of the Board. Thus a member may be removed by the Mayor, as provided in subsection (g) of this section, for repeated failures to attend such meetings, thereby hindering the work of the Board.

(k) The Board may appoint such employees as may be required to conduct its business. The Board is authorized to request such appropriations as may be necessary to carry out its functions. Each employee of the Board, except the Executive Director, is in the Career Service as defined in subchapter VIII of this chapter.

(l) Three (3) members of the Board shall constitute a quorum for the transaction of business. (Mar. 3, 1979, D.C. Law 2-139, § 501, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-335.2. Powers of the Board.

The Board shall have the power to do the following:

(a) resolve unit determination questions and other representation issues (including but not limited to disputes concerning the majority status of a labor organization);

(b) certify and decertify exclusive bargaining representatives;

(c) decide whether unfair labor practices have been committed and issue an appropriate remedial order;

(d) resolve bargaining impasses through fact finding, final and binding arbitration or other methods agreed upon by the parties as approved by the Board and to remand disputes if it believes further negotiations are desirable. Arbitration shall not be conducted by the Board itself, but the Board shall provide arbitrators selected at random from a panel or list of arbitrators maintained by the Board and consisting of persons agreed upon by labor and management;

(e) make a determination in disputed cases as to whether a matter is within the scope of collective bargaining;

(f) consider appeals from arbitration awards pursuant to a grievance procedure: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means: Provided, further, that the provisions of this subsection shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of the District of Columbia Uniform Arbitration Act (D.C. Code, Appendix, Title 16);

(g) conduct investigations, hear testimony and take evidence under oath at hearings on any matter subject to its jurisdiction;

(h) administer oaths or affirmations and through the power of subpoena, require the attendance of witnesses with any necessary records or other information which have a bearing on the dispute, without however, abrogating rules and regulations abridging the confidentiality of personnel files as provided in subchapter XXXI of this chapter;

(i) make decisions and take appropriate action on charges of failure to adopt, subscribe or comply with the internal or national labor organization standards of conduct for labor organizations;

(j) make recommendations concerning desirable revisions or amendments to the District government labor relations law;

(k) adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties;

(l) the Board may hear any matter brought to it under this chapter by a three (3) member panel. An appeal from a decision of any such three (3) member panel may be taken to either the full Board or the Superior Court of the District of Columbia at the option of any adversely affected party, and if not taken within one hundred twenty (120) days the decision shall be final. If an appeal is taken directly to the Superior Court of the District of Columbia, the decision of a three (3) member panel, for purposes of such appeal, shall be considered as the final decision of the Board. If an appeal is taken from a decision of a three (3) member panel to the full Board, the decision of the three (3) member panel shall be stayed pending a final decision of the Board. Upon a vote of the majority of its members, the Board may hear de novo all issues of fact or law relating to an appeal of a decision of the three (3) member panel, except the Board may decide to consider only the record made before such three (3) member panel. A final decision of the full Board, relating to an appeal brought to it from a three (3) member panel, shall be appealable to the Superior Court of the District of Columbia. Upon reviewing the final decision of the Board, the Court shall determine if it is supported by substantial evidence and not clearly erroneous as a matter of law;

(m) establish and maintain a list of qualified mediators, factfinders and arbitrators after consulting with employee organizations and management representatives, and appoint them;

(n) retain independent legal counsel to assist in Board activities when the District government is a party to the Board's proceedings or in any other situation as the Board deems appropriate;

(o) develop a system for the collection, maintenance and dissemination of labor-management relations information as appropriate to the needs of the District, labor organizations and the public; and

(p) seek appropriate judicial process to enforce its orders and otherwise carry out its authority under this chapter. In cases of contumacy by any party or other delay or impediment of any character, the Board may seek any and all such judicial process or relief as it deems necessary, to enforce and otherwise carry out its powers, duties and authority under this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 502, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-335.3. Transfer of property and personnel.

(a) The property and facilities of the Board of Labor Relations, established pursuant to Commissioner's Order 70-229, shall be transferred to the Public Employee Relations Board as provided in subchapter XXXVI of this chapter.

(b) The personnel and positions assigned to the Board of Labor Relations shall be transferred to the Public Employee Relations Board as provided in subchapter XXXVI of this chapter: Provided, however, that incumbents of positions considered surplus to the needs of the Public Employee Relations Board may be separated in accordance with the provisions of subchapter XXIV of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 503, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-335.4. Publication of decisions.

The Board shall cause a copy of each order, decision or opinion rendered by it to be published in the District of Columbia Register within sixty (60) days of its issuance. (Mar. 3, 1979, D.C. Law 2-139, § 504, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter VI. — Office of Employee Appeals

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-336.1. Establishment of the Office of Employee Appeals.

(a) There is established an Office of Employee Appeals (hereinafter referred to in this subchapter as the "Office"). The Office shall be composed of five (5) members to be appointed by the Mayor in accordance with the provisions of subsection (b) of this section within sixty (60) days of the date this chapter becomes effective as provided in section 1-366.1. Members of the Office shall have demonstrated knowledge concerning personnel management or labor relations, and a reputation for impartiality and integrity in the discharge of their responsibilities. No member shall be eligible for reappointment.

(b) The term of office of each member of the Office shall be six (6) years: Except, that (1) of those members first appointed, two (2) shall serve for two (2) years and three (3) shall serve for four (4) years respectively, from the date of appointment; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. No member may serve beyond the expiration of his or her term: Provided, however, that members serving terms of less than six (6) years, as appointed under the provision of clause (1) of this subsection, may be reappointed for a full six (6) year term. Appointments to fill vacancies shall be made in accordance with the provisions of subsection (a). The Mayor shall designate the term of each member at the time of his or her appointment.

(c) The Chairperson of the Office shall be designated by the Mayor. The Chairperson shall be the chief executive and administrative officer of the Office.

(d) Three (3) members of the Office shall constitute a quorum for the transaction of official business and the issuance of rules and regulations. The Office may hear appeals brought before it under this subchapter by a three (3) member panel. An appeal from a decision of any such three (3) member panel may be taken either to the full Office or to the Superior Court of the District of Columbia at the option of any adversely affected party. If an appeal is taken directly to the Superior Court of the District of Columbia, the decision of a three (3) member panel, for the purposes of such appeal, shall be considered as the final decision of the Office. If an appeal is taken from a decision of a three (3) member panel to the full Office, the decision of the three (3) member panel shall be stayed pending a final decision of the Office. Upon a vote of a majority of its members, the Office may hear de novo all issues of fact or law relating to an appeal of a decision of the three (3) member panel, except the Office may decide to consider only the record made before such three (3) member panel. A final decision of the full Office, relating to an appeal brought to it from a three (3) member panel, shall be appealable to the Superior Court of the District of Columbia. Upon reviewing the final decision of the Office, the Court shall determine if it is supported by substantial evidence.

(e) If at any time any matter comes before the Office in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of the matter under deliberation.

(f) Each member of the Office is entitled to compensation as provided in section 1-341.8.

(g) The Office may appoint such employees and make such expenditures as are necessary to carry out its functions.

(h) The Office shall be considered an independent agency for budgetary and administrative purposes.

(i) (1) The Mayor may remove any member of the Office who engages in any activity prohibited by subsection (j) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall initiate an action, in the Superior Court of the District of Columbia in accordance with the provisions of section 16-3521 et seq., to remove such member.

(2) Any vacancy occurring in the Office shall be filled within forty-five (45) days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(3) The procedure provided for in subsections (a) and (b) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least thirty (30) days prior to the expiration. If a vacancy occurs during a term due to removal, resignation or death of a member, the new appointee's term of office is the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsections (a) and (b) of this section.

(j) Any member of the Office who:

(1) violates the provisions of subsection (k) of this section; or

(2) engages in a conflict of interest in violation of the provisions of subchapter XVIII of this chapter; or

(3) is convicted of a crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offense, shall be removed from office as provided in this section.

(k) No member of the Office may hold any other position in the District government or any subordinate position in the Office. (Mar. 3, 1979, D.C. Law 2-139, § 601, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of subsection (f), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.4, 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-336.2. Duties of the Office.

(a) The Office shall have, in addition to the authority necessary and proper for carrying out its duties as specified elsewhere in this subchapter, the authority to:

(1) appoint and remove employees of the Office, subject to applicable provisions of this chapter;

(2) hear and adjudicate appeals received from District agencies and from employees as provided in this subchapter;

(3) issue an annual report on the activities of the Office to the Mayor and Council which should include, at a minimum the following:

(A) the number and nature of cases heard by the Office, and the type of order issued in each case;

(B) the number of appeals heard by Office panels and the disposition of such appeal or type of order issued in each case;

(C) the number of appeals taken to Superior Court of the District of Columbia (both directly and from Office panels) and the disposition of or status of each case; and

(D) a statement of the amount of time taken to reach a final disposition of each case brought before the Office and a statement of the number of backlogged cases, if any;

(4) compel the appearance of witnesses and production of documents by subpoena, enforceable by the Office in the Superior Court of the District of Columbia; and

(5) issue any rules and regulations necessary to carry out its duties under this chapter.

(b) Any performance rating, grievance, adverse action or reduction-in-force review which has been included within a collective bargaining agreement under the provisions of subchapter XVII of this chapter, shall not be subject to the provisions of this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 602, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

§ 1-336.3. Appeal procedures.

(a) Any employee may appeal a final agency decision affecting a performance rating (pursuant to subchapter XIV of this chapter), an adverse action (pursuant to subchapter XVI of this chapter), a reduction-in-force (pursuant to subchapter XXIV of this chapter), resolving a grievance (pursuant to subchapter XVI of this chapter), affecting erroneous employee payments (pursuant to subchapter XXIX of this chapter), affecting privacy and records management (pursuant to subchapter XXXI of this chapter) or deciding the classification of a position (pursuant to sections 1-341.2 (c) and 1-341.11 (c)) to the Office upon the record and under such other rules and regulations which the Office may issue.

(b) In any appeal taken pursuant to this section, the Office shall review the record and uphold, reverse or modify the decision of the agency. The Office may order oral argument, on its own motion or on motion filed by any party within fifteen (15) days, and provide such other procedures or rules and regulations as it deems practicable or desirable in any appeal under this section.

(c) All decisions of the Office shall include findings of fact and a written decision and order: Provided, however, that the Office may affirm a decision without findings of fact and a written decision. Such decisions shall be published in accordance with the rules and regulations of the Office, with information identifying the employee and agency deleted, and shall be published in the District of Columbia Register.

(d) Any employee or agency may appeal the decision of the Office to the Superior Court of the District of Columbia for a review of the record and such Court may affirm, reverse, remove or modify such decision, or take any other appropriate action the Court may deem necessary. (Mar. 3, 1979, D.C. Law 2-139, § 603, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-336.4. Agency hearing procedures.

(a) Each agency shall establish internal rules and regulations not inconsistent with the procedures of this subchapter, for conducting hearings affecting individual employees.

(b) Each agency shall provide for ten (10) days advance notice in writing prior to the taking of any action which adversely affects an employee: Provided, however, that this provision may be waived by the agency if the employee's conduct constitutes an immediate hazard to the agency, to other employees of the government, to the employee, or to the detriment of the public health, safety or welfare.

(c) Each agency shall provide that any employee against whom action is taken adversely affecting such employee shall have the right to prepare a written response to the notice provided in subsection (b) of this section.

(d) Each agency shall provide no less than one (1) internal review by a disinterested designee of the agency head of the proposed action to be taken and the employee's response thereto, and may provide for an adversary hearing and the confrontation of witnesses.

(e) Each agency shall advise each employee against whom action is taken adversely affecting the employee of his or her right to appeal to the Office as provided in this subchapter.

(f) Any employee may be represented by an attorney or an individual of his or her choice. (Mar. 3, 1979, D.C. Law 2-139, § 604, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter VII.—Equal Employment Opportunity

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-337.1. Affirmative action.

(a) The Council reaffirms its intent that the objectives of the Affirmative Action in District Government Employment Act, as amended (D.C. Code, sec. 1-320a) be carried out.

(b) Each agency shall make reasonable accommodations for the free exercise of religion by its employees, and may adjust work schedules unless such adjustment would result in a substantial disruption of District business. (Mar. 3, 1979, D.C. Law 2-139, § 701, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.2. Special provisions for the physically handicapped and the developmentally disabled.

The Mayor may develop rules and regulations which authorize the inquiry into bona fide job-related qualifications which may affect persons with physical handicaps or developmental disabilities, prior to appointing such individuals under the authority of section 1-339.4 (b). Physically handicapped or developmentally disabled persons who apply for positions under the authority of subchapters VIII and VIIIA of this chapter may be examined to assure that their level of skills is sufficient to meet minimal job qualifications. (Mar. 3, 1979, D.C. Law 2-139, § 702, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.3. Veterans preference in employment.

(a) For appointment under the provisions of subchapters VIII and VIIIA of this chapter, persons who have served on active duty in the Armed Forces of the United States for more than one hundred eighty (180) consecutive days, not including service under honorable conditions as provided in 511 (d) of Title 10 of the United States Code and have separated from the Armed Forces under honorable conditions may receive an additional five (5) points on any register established under the authority of subchapters VIII and VIIIA of this chapter.

(b) A person entitled to preference points, as provided in subsection (a) of this section, shall receive an additional five (5) points if he or she has separated from the Armed Forces under honorable conditions, and has established the presence at the time of appointment of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public law administered by the Veterans Administration or a military department.

(c) Any employee of the District government who, on January 1, 1979, was entitled to veterans preference under federal law, shall continue to be entitled to such veterans preference under this chapter.

(d) The Mayor is authorized to develop procedures for the consideration of granting veterans preference, as provided in this section, to persons who served in the Armed Forces but were less than honorably discharged. Such persons may be entitled to the preference afforded by this section at the time of initial appointment if they show, to the satisfaction of the Mayor, that they have been discriminated against in violation of those rights guaranteed in section 1-331.1 (b)(5) and subchapter VII of this chapter. No appeal shall be available to any person not afforded a veterans preference under the provisions of this subsection.

(e) For purposes of any appointment preference, no person shall receive any preference after five (5) years from the date of separation from active duty in the Armed Forces. A person classified as thirty percent (30%) or more disabled under subsection (b) of this section shall receive an appointment preference regardless of the date of separation from active duty in the Armed Forces.

(f) No person entering the Armed Forces of the United States after October 14, 1976, shall receive any preference unless the person served in the Armed Forces of the United States during time of war.

(g) No person retiring from the Armed Forces of the United States shall receive any preference. (Mar. 3, 1979, D.C. Law 2-139, § 703, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.4. Statement of purpose; use and validity of selection procedures.

The Council believes that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by this subchapter. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may aid significantly in the development and maintenance of an efficient work force and in the utilization and conservation of human resources. (Mar. 3, 1979, D.C. Law 2-139, § 704, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.5. Selection procedure and relationship to discrimination.

The selection procedures utilized shall be job related to minimize or eliminate discrimination. (Mar. 3, 1979, D.C. Law 2-139, § 705, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-337.6.

§ 1-337.6. Evidence of validity.

(a) Each person utilizing a selection procedure in choosing among candidates for a position shall have available for inspection evidence that the procedure does not violate section 1-337.5. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates.

(b) Evidence of selection procedure validity should consist of evidence demonstrating that the procedure is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated. (Mar. 3, 1979, D.C. Law 2-139, § 706, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.7. Discrimination in benefit programs.

No benefit program shall be denied to any District employee on account of sex. (Mar. 3, 1979, D.C. Law 2-139, § 707, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-337.8. Specific standards authorized.

Specific standards to carry out the purposes of this subchapter shall be adopted by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 708, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter VIII.—Career Service

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-338.1. Creation of Career Service.

(a) The Mayor shall issue rules and regulations governing employment, advancement and retention in the Career Service which shall include all persons appointed to positions in the District government, except persons appointed to positions in the Excepted, Executive or Educational Services. The Career Service shall also include, after January 1, 1980, all persons who are transferred into the Career Service pursuant to the provisions of subsection (c) of section 1-332.4. The rules and regulations governing Career Service employees shall be indexed and cross-referenced to the incumbent classification system and shall provide for the following:

- (1) a positive recruitment program designed to meet current and projected personnel needs;
- (2) open competition for initial appointment to the Career Service;
- (3) examining procedures designed to achieve maximum objectivity, reliability and validity through a practical assessment of attributes necessary to successful job performance and career development as provided in subchapter VII of this chapter;
- (4) appointments to be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements, from appropriate lists established on the basis of the provisions of paragraphs (1), (2) and (3) of this subsection with appropriate regard for affirmative action goals and veterans preference as provided in subchapter VII of this chapter;
- (5) appointments made without time limitation in accordance with paragraph (4) of this subsection, as permanent Career Service status appointments upon satisfactory completion of a probationary period of at least one (1) year;
- (6) temporary and other time-limited appointments, in appropriate cases, which do not confer permanent status but are to be made, insofar as practicable, in accordance with paragraph (4) of this subsection;
- (7) appointments to continuing positions (in the absence of lists of eligibles), which do not confer permanent status, subject to meeting minimum qualification standards and subject to termination as soon as lists of qualified eligibles for permanent appointment can be established in accordance with paragraph (4) of this subsection;
- (8) emergency appointments for not more than thirty (30) days to provide for maintenance of essential services in situations of natural disaster or catastrophes where normal employment procedures are impracticable;
- (9) promotions of permanent employees, giving due consideration to demonstrated ability, quality and length of service;
- (10) reinstatements, reassignments and transfers of employees with permanent status;
- (11) establishment of programs, including trainee programs, designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities for members of disadvantaged groups, handicapped persons, women and other appropriate target groups. These programs may provide for permanent appointments to trainee or similar positions through competition limited to these persons;
- (12) reduction-in-force procedures, with (A) a prescribed order of separation based on tenure of appointment, length of service, including creditable federal and military service, veterans preference and officially documented work performance; (B) priority reemployment

consideration for employees separated; (C) consideration of job sharing and reduced hours; and (D) employee appeal rights; and

(13) separations for cause, which shall be subject to the adverse action and appeal procedures provided for in subchapter XVI of this chapter.

(b) Selections to the Career Service shall be made in accordance with equal employment opportunity principles as set forth in subchapter VII of this chapter.

(c) (1) For the purpose of this subsection, "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

(2) A public official may not appoint, employ, promote, advance or advocate for appointment, employment, promotion or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.

(3) A public official who appoints, employs, promotes or advances, or advocates such appointment, employment, promotion or advancement of any individual appointed in violation of this subsection shall reimburse the District for any such funds improperly paid to such individual.

(4) The Mayor may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this subsection.

(d) The Mayor may issue separate rules and regulations concerning the personnel system affecting members of the uniform services of the Police and Fire Departments which may provide for a probationary period of at least one (1) year. Other such separate rules and regulations may only be issued to carry out provisions of this chapter which accord such member of the uniform services of the Police and Fire Departments separate treatment under this chapter. Such separate rules and regulations are not a bar to collective bargaining during the negotiation process between the Mayor and the recognized labor organizations for the Metropolitan Police and Fire Departments, but shall be within the parameters of section 1-347.8.

(e) (1) Notwithstanding any provision in section 6-2201, after the date this chapter becomes effective as provided in section 1-366.1, any person other than an incumbent employee who applies for a position in the Career Service and who accepts appointment or is hired to fill a position in that Service shall become a bona fide resident of the District of Columbia within one hundred eighty (180) days of the effective date of such appointment, and shall maintain such residence for the duration of the employment. Failure to become a District resident, or to maintain District residency, shall result in forfeiture of the position to which the said person has been appointed.

(2) Within sixty (60) calendar days of the date that this chapter becomes effective, as provided in section 1-366.1, the Mayor, the Board of Education and the Board of Trustees of the University of the District of Columbia in appropriate cases, shall submit to the Council rules and regulations which exempt specific classes or groups of Career Service employees whose employment may involve a transfer between District government agencies or facilities located within the physical boundaries of said District and District government agencies or facilities located without the physical boundaries of said District. Such rules and regulations shall be valid only if the Council does not adopt, within sixty (60) calendar days of the date of the Mayor's submission, a resolution disapproving such rules and regulations.

(3) The Mayor may submit to the Council, at any time after the date that this chapter becomes effective according to the provisions of section 1-366.1, rules and regulations which exempt specific classes or groups of Career Service employees other than those covered under

the provisions of paragraph (2) of this subsection. Whenever such rules and regulations are submitted, the Mayor shall set forth, in sufficient detail, the reasons for each recommended exemption and the number of employees affected thereby. Such rules and regulations shall be valid only if the Council does not adopt, within sixty (60) calendar days of the date of the Mayor's submission, a resolution disapproving such rules and regulations.

(4) The Mayor shall submit to the Council, on July 1st of each year, a report which states the impact of the residency requirement contained in this section on the system of personnel administration established by this chapter. This report shall be published in the District of Columbia Register.

(5) Nothing in this section shall be construed to apply to persons employed by the District government on or before the date this chapter becomes effective, as provided in section 1-366.1. (Mar. 3, 1979, D.C. Law 2-139, § 801, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(a), 25 DCR 10565.)

Effect of Amendment.

1979 — Act Aug. 1, 1979, D.C. Law 3-14, amended section by inserting "other than an incumbent employee" in the first sentence of paragraph (1) of subsection (e).

Emergency Act Amendments.

1979 — For temporary amendment of paragraph (1) of subsection (e), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979 (D.C. Act 3-14, Mar. 1, 1979, 25 DCR 8244); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Second Emergency Amendments of 1979 (D.C. Act 3-45, May 29, 1979, 25 DCR 10468).

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 3-14. Law 3-14 was introduced in Council and assigned Bill No. 3-114, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-51 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 1-332.4, 1-339.6, 1-340.1, 1-340.2.

Subchapter VIIIA.—Educational Service

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-338.2. Creation of the Educational Service.

(a) For the purpose of this subchapter, the term "Boards" means the District of Columbia Board of Education for educational employees of the Board of Education and the Board of Trustees of the University of the District of Columbia for educational employees of the University of the District of Columbia.

(b) The Boards shall issue rules and regulations governing employment, advancement, and retention in the Educational Service, which shall include all educational employees of the District of Columbia employed by the Boards. The rules and regulations shall be indexed and cross referenced as to the incumbent classification and compensation system.

(1) *University of the District of Columbia.* — In keeping with the purpose of this chapter, the Board of Trustees of the University of the District of Columbia shall issue rules and regulations embodying principles of merit and equal employment governing, among others, appointment, promotion, retention, reassignment, professional development and training, classification, and salary administration (except as provided in section 1-332.3), employee benefits, reduction-in-force, adverse action, grievances and appeals, provided that such rules and regulations concerning adverse actions and regulations covering adverse actions and appeals shall be consistent with subchapters V, VI, VII, XVI and XVII of this chapter.

(2) *The Board of Education.* — The Board of Education shall issue rules and regulations which shall provide for the following:

(A) a positive recruitment program designed to meet current and projected personnel needs;

(B) open competition for initial appointment to the service;

(C) appointments procedures designed to achieve maximum objectivity, reliability and validity through a practical assessment of attributes necessary to successful job performance and career development as provided in subchapter VII of this chapter;

(D) appointments to be made on the basis of merit by selection from the highest qualified available eligible persons based on specific job requirements, from appropriate lists or files established on the basis of the provisions of subparagraphs (A), (B) and (C) of this paragraph with appropriate regard for affirmative action goals and veterans preference as provided in subchapter VII of this chapter;

(E) appointments made without time limitation in accordance with subparagraph (D) of this paragraph, as permanent Educational Service status appointments upon satisfactory completion of a probationary period of at least one (1) year;

(F) temporary and other time-limited appointments in appropriate cases which do not confer permanent status, but are to be made, insofar as practicable, in accordance with subparagraph (D) of this paragraph;

(G) appointments to continuing positions (in the absence of lists of eligibles), which do not confer permanent status, subject to meeting minimum qualification standards and subject to termination as soon as lists of qualified eligibles for permanent appointment can be established in accordance with subparagraph (D) of this paragraph;

(H) emergency appointments for not more than thirty (30) days to provide for maintenance of essential services in situations of natural disaster or catastrophes where normal employment procedures are impracticable;

(I) promotion of permanent employees, giving due consideration to demonstrated ability, quality and length of service;

(J) reinstatements, reassignments and transfers of employees with permanent status;

(K) establishment of programs, including trainee programs, designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities for members of disadvantaged groups, handicapped persons, women and other appropriate target groups. These programs may provide for permanent appointments to trainee or similar positions through competitive procedures established by the Boards;

(L) reduction-in-force procedures, with (i) a prescribed order of separation based on tenure of appointment, length of service, including creditable federal and military service, veterans preference, and relative work performance; (ii) priority reemployment consideration for employees separated; (iii) consideration of job sharing and reduced hours; and (iv) employee appeal rights;

(M) separation for cause, which shall be subject to the adverse action and appeal procedures provided for in subchapter XVI of this chapter; and

(N) selections to the Educational Service shall be made in accordance with equal employment opportunity principles as set forth in subchapter VII of this chapter.

(c) (1) For the purpose of this subsection, "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

(2) A public official who appoints, employs, promotes or advances, or advocated such appointment, employment, promotion or advancement of any individual in violation of this subsection shall reimburse the District for any funds improperly paid to such individual.

(3) The Boards may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this subsection.

(4) A public official may not appoint, employ, promote, advance or advocate for appointment, employment, promotion or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who

is a relative of the public official. An individual may not be appointed, employed, promoted or advanced in or to a position in an agency if such appointment, employment, promotion or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency, and is a relative of the individual.

(d) (1) Notwithstanding any provision in section 6-2201, after the date this chapter becomes effective, as provided in section 1-366.1, any person other than an incumbent employee who applies for a position in the Educational Service and who accepts appointment or is hired to fill a position in the Educational Service shall become a bona fide resident of the District of Columbia within one hundred eighty (180) days of the effective date of such appointment, and shall maintain such residence for the duration of the employment. Failure to become a District resident, or to maintain District residency, shall result in forfeiture of the position to which the said person has been appointed.

(2) Within sixty (60) calendar days of the date this chapter becomes effective, as provided in section 1-366.1, the Boards shall submit to the Council rules and regulations which exempt specific classes or groups of Educational Service employees whose employment may involve a transfer between District government agencies or facilities located within the physical boundaries of said District and District government agencies or facilities located outside the physical boundaries of said District. Such rules and regulations shall be valid only if the Council does not adopt, within sixty (60) calendar days of the date of the Boards' submission, a resolution disapproving such rules and regulations.

(3) The Boards may submit to the Council, at any time after the date this chapter becomes effective according to the provisions of section 1-366.1, rules and regulations which exempt specific classes or groups of Educational Service employees other than those covered under the provisions of paragraph (2) of this subsection. Whenever such rules and regulations are submitted, the Boards shall set forth, in sufficient detail, the reasons for each recommended exemption and the number of employees affected thereby. Such rules and regulations shall be valid only if the Council does not adopt, within sixty (60) calendar days of the date of the Boards' submission, a resolution disapproving such rules and regulations.

(4) The Mayor shall submit to the Council, on July 1st of each year, a report which states the impact of the residency requirement contained in this section on the system of personnel administration established by this chapter. This report shall be published in the District of Columbia Register.

(5) Nothing in this section shall be construed to apply to persons employed by the District government on or before the date this chapter becomes effective, as provided in section 1-366.1. (Mar. 3, 1979, D.C. Law 2-139, § 801A, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2 (b), 25 DCR 10565.)

Effect of Amendment.

1979 — Act Aug. 1, 1979, D.C. Law 3-14, amended section by inserting "other than an incumbent employee" in the first sentence of paragraph (1) of subsection (d).

Emergency Act Amendments.

1979 — For temporary amendment of paragraph (1) of subsection (d), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979 (D.C. Act 3-14, Mar. 1,

1979, 25 DCR 8244); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Second Emergency Amendments of 1979 (D.C. Act 3-45, May 29, 1979, 25 DCR 10468).

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 3-14. See note to § 1-338.1. Section referred to in section. 1-332.4.

Subchapter IX. — Excepted Service

§ 1-339.1. Creation of the Excepted Service.

The qualifications for each Excepted Service position shall be developed and issued by the appropriate personnel authority in consultation with the Mayor. Each employee appointed in the Excepted Service (except those included in section 1-339.8) must meet the minimum standards prescribed for the position to which he or she is appointed. Each personnel authority may fill positions in the Excepted Service as provided in this subchapter. Excepted Service employees

may be hired non-competitively. Persons appointed to the Excepted Service are not in the Career, Educational, or Executive Services. (Mar. 3, 1979, D.C. Law 2-139, § 901, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-332.3, 1-339.2, 1-339.3.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-339.2. Nature of positions in the Excepted Service and conversion rights.

Each person holding an excepted appointment under the authority of this section and sections 1-339.1 and 1-339.3 is intended to be an individual whose primary duties are of a policy determining, confidential, or policy advocacy character and who reports directly to the head of an agency. No person holding excepted appointments may be given appointments in the Career Service for at least six (6) months following the termination of his or her employment in the Excepted Service, unless such person is eligible for appointment under the authority of subchapter VIII or VIIIA of this chapter or appointed under the authority of section 1-339.4 (a) and (b). (Mar. 3, 1979, D.C. Law 2-139, § 902, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-339.4.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-339.3. Number of Excepted Service employees.

(a) Under qualifications issued pursuant to section 1-339.1, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

(1) The Mayor may appoint persons to serve as his or her personal staff, to be paid from funds appropriated for the Office of the Mayor;

(2) The Mayor may appoint persons to one hundred (100) positions, which may be allotted at the Mayor's discretion, among subordinate agencies of the District;

(3) All employees of the Council of the District of Columbia, except those permanent technical and clerical employees appointed by the Secretary, General Counsel or Legislative Counsel;

(4) The District of Columbia Board of Education may appoint 25 persons;

(5) The Board of Trustees of the University of the District of Columbia may appoint Officers of the University, persons who report directly to the President, persons who head major units of the University, academic administrators and persons in a confidential relationship to the foregoing, exclusive of those listed in the definition of the Educational Service.

(6) The District of Columbia General Hospital Commission may appoint ten (10) persons;

(7) Each other personnel authority not expressly designated above may appoint two (2) persons.

(b) The authority to appoint persons to the Excepted Service, which is vested in subsection (a) of this section, may be redelegated, in whole or in part.

(c) Each personnel authority vested with authority in subsection (a) of this section shall publish in the District of Columbia Register within fifteen (15) days of March 3, 1979, a list of all positions to be filled by Excepted Service appointments under the authority of this section. Such notice shall also include a complete statement of position qualifications, standards and the proposed salary range for each position. Within forty-five (45) days of actual appointment, the names of all persons appointed to Excepted Service positions under the authority of this section shall be published in the District of Columbia Register. Thereafter, any changes in such appointments shall be published in the District of Columbia Register within forty-five (45) days after the actual change in appointment. (Mar. 3, 1979, D.C. Law 2-139, § 903, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-334.6, 1-339.2.

Cross reference. For effective date of D.C. Law 2-139,
 see § 1-366.1.

§ 1-339.4. Special appointments.

Special non-competitive appointments may be made to positions provided under the authority of this section. Such positions are covered by the provisions of section 1-339.2 relating to the Excepted Service positions. The nature of the appointment must be made known to the employee prior to effecting the appointment.

(a) Individuals appointed to positions created under public employment programs established by law;

(b) Positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including developmentally disabled or handicapped persons, ex-offender or other disadvantaged groups;

(c) Positions filled by the appointment of a federal employee under the mobility provisions of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648, 84 Stat. 1901);

(d) Positions established under federal grant funded programs having a limited or indefinite duration, provided state merit requirements are not applicable: Provided, however, that this subsection shall not apply to any employees of the Board of Education or of the Trustees of the University of the District of Columbia;

(e) Positions established to employ professional, scientific or technical experts or consultants; or

(f) Positions established under cooperative educational and study programs.
 (Mar. 3, 1979, D.C. Law 2-139, § 904, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-332.4, 1-337.2, 1-339.2,
 1-339.5, 1-346.1, 1-366.1.

Cross reference. For effective date of D.C. Law 2-139,
 see § 1-366.1.

§ 1-339.5. Lack of job protection; procedural protection.

Employees in the Excepted Service (other than those appointed under the authority of section 1-339.4) do not have any job tenure or protection. After one (1) year of average or above average performance as determined under subchapter XIV of this chapter, persons appointed under the authority of this subchapter shall be entitled to a notice of at least fifteen (15) days when termination of service prior to the expiration date of appointment is contemplated, explaining the reason therefor. The employee does not have any right to appeal the termination. All other provisions of this chapter apply to Excepted Service employees. (Mar. 3, 1979, D.C. Law 2-139, § 905, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139,
 see § 1-366.1.

§ 1-339.6. Residency.

The provisions of subsection (e) of section 1-338.1 shall apply to all employees in the Excepted Service: Provided, however, that such provisions shall not be construed to apply to persons employed by the District government on or before the date that this chapter becomes effective as provided in section 1-366.1. (Mar. 3, 1979, D.C. Law 2-139, § 906, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139,
 see § 1-366.1.

§ 1-339.7. Transitional provisions.

Persons holding non-temporary appointments in the District of Columbia government, paid from appropriations made to the Office of the Mayor, may on January 2, 1979 be reassigned to other offices or agencies of the District government. Persons holding appointments in the District of Columbia government, paid from appropriations made to the Council of the District of Columbia and classified as a GS-10 or less under section 5332 of Title 5 of the United States Code and whose position would not be in the Excepted Service under the provisions of this subchapter on January 1, 1980 shall be appointed to the Career Service created in subchapter VIII of this chapter, if such incumbent is found to possess the minimal qualifications for the position to which he or she is appointed. (Mar. 3, 1979, D.C. Law 2-139, § 907, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-339.8. Statutory office holders.

The following employees of the District shall be deemed to be in the Excepted Service. Their terms of office shall be at the pleasure of the appointing authority, or as provided by statute for a term of years, subject to removal for cause as may be provided in their appointing statute:

- (a) City Administrator;
 - (b) General Counsel to the District of Columbia Board of Elections and Ethics;
 - (c) The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;
 - (d) People's Counsel of the District of Columbia;
 - (e) Auditor of the District of Columbia;
 - (f) The Chairman and Members of the Public Service Commission;
 - (g) The Chairman and Members of the Board of Parole;
 - (h) Executive Director of the Public Employee Relations Board;
 - (i) Secretary to the Council;
 - (j) General Counsel to the Council;
 - (k) Legislative Counsel to the Council; and
 - (l) Chief Hearing Examiner of the Office of Employee Appeals.
- (Mar. 3, 1979, D.C. Law 2-139, § 908, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-339.1, 1-348.3, 1-1171, 1-1181, 1-1182.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-339.9. Appointment of attorneys.

Emergency Act Amendment.
 1979 — For temporary addition of section, see sec. 2 of the District of Columbia Government Comprehensive

Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Subchapter X. — Executive Service

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-340.1. Creation of Executive Service.

(a) An Executive Service is established within the District government to ensure that each subordinate agency head is of the highest quality and is responsive to the needs of the District of Columbia. A person who is in the Executive Service is not in the Career, Educational, or Excepted Services. The Executive Service shall be administered to do the following:

(1) attract, recruit and provide for the selection of the best executive talent available and to encourage continuity of service;

(2) assist the Mayor in establishing the pay as provided in subchapter XI of this chapter and duty assignments of the executives under his or her direction as will best advance the program responsibilities of the District; and

(3) make effective a separate system for the filling of executive positions, with practices and procedures which are expressly attuned to the development and utilization of executive leadership.

(b) The Mayor shall appoint the head of each subordinate agency.

(c) The head of each subordinate agency shall serve at the pleasure of the Mayor.

(d) No person holding a position in the Executive Service may be appointed to a position in the Career or Educational Services for at least one (1) year immediately following his or her termination in the Executive Service: Provided, however, that upon such termination a person with Career or Educational Service status may retreat within three (3) months to a vacant position in such service for which he or she is qualified.

(e) The provisions of subsection (e) of section 1-338.1 shall apply to all persons appointed in the Executive Service. (Mar. 3, 1979, D.C. Law 2-139, § 1001, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-340.2. Incumbents.

Each incumbent subordinate agency head on the date this section becomes effective, as provided in subsection (a) of section 1-366.1, is entitled to continue service with the District government at the same salary and benefits as he or she currently receives and without regard to the provisions of subsection (e) of section 1-338.1: Provided, however, that no such person is entitled to remain a subordinate agency head unless specifically appointed by the Mayor in accordance with this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 1002, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XI.—Classification and Compensation

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-341.1. Classification policy.

(a) The classification of all positions in the Career, Educational and the Excepted Services, will be accomplished in accordance with the following policy:

(1) Individual positions will be grouped and identified by classes and grades, in accordance with their duties, responsibilities and qualification requirements and shall be indexed and cross referenced in the incumbent classification and compensation system; and

(2) The principle of equal pay for substantially equal work will be supported.

(b) The grade levels of all positions in the Career, Educational and Excepted Services shall be based on the consideration of applicable factors such as knowledge and skills required by the positions; supervisory controls exercised over the work; guidelines used; complexity of the work; scope and effect of the work; personal contacts; purpose of contacts; physical demands of the positions; and work environment.

(c) Classification systems or proposals developed under the authority of this subchapter shall be published in the District of Columbia Register at least sixty (60) days prior to their proposed effective date. The Mayor or the Board of Education or the Board of Trustees of the University of the District of Columbia shall hold, as provided in this subchapter, a public hearing on all such proposals he, she or it has published in the District of Columbia Register prior to his, her or its adoption of a classification system or amendment to such system. (Mar. 3, 1979, D.C. Law 2-139, § 1101, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-341.2, 1-341.11.

§ 1-341.2. Establishment and maintenance of classification system for Career and Excepted Services employees.

(a) In order to carry out the policies of section 1-341.1, the Mayor shall provide for the development of a classification system covering all positions in the Career and the Excepted Services.

(b) The Mayor shall provide that all positions covered by this classification system are properly described in writing in accordance with the principal duties and responsibilities officially assigned to those positions and shall provide that all positions are properly evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. The Mayor shall provide for meaningful consultation with the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia in the classification of positions of persons in the Career Service employed by the educational boards.

(c) The Mayor shall provide that employees whose positions are covered in this classification system have the right to appeal the classification of their positions without restraint, or fear of reprisal or prejudice as provided in subchapter VI of this chapter to the Office of Employee Appeals.

(d) Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least sixty (60) days prior to their proposed effective date. The Mayor shall hold a public hearing on all such proposals he or she publishes in the District of Columbia Register prior to his or her adoption of a classification system(s) or amendment to such system(s). (Mar. 3, 1979, D.C. Law 2-139, § 1102, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-336.3.

§ 1-341.3. Compensation policy.

(a) Compensation for all employees in the Career, Educational and the Excepted Services shall be fixed in accordance with the following policy:

(1) compensation, including rates of pay, retirement benefits, leave provisions and other elements of the fringe benefit package shall be competitive with that provided other public and private sector employees having comparable duties, responsibilities, qualifications and working conditions by occupational groups. For the purposes of this subsection, compensation shall be deemed to be competitive if, in total, it falls reasonably within the range of compensation prevailing in the Washington Standard Metropolitan Statistical Area, including the federal government, area state and local governments, private employers and compensation plans of cities with populations comparable to the District of Columbia: Provided, however, that compensation levels may be examined for public and/or private employees outside the area when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels;

(2) pay for the various occupations and groups of employees shall be to the maximum extent practicable, interrelated and equal for substantially equal work;

(3) differences in pay shall be maintained in keeping with differences in level of work and quality of performance; and

(4) no employee may be paid a rate of basic pay in excess of the rate of pay for the Mayor.

(b) The pay of an individual receiving an annuity under any federal or District government civilian retirement system, or any retirement system of the uniformed services of the United States, selected for employment in the District government on or after the effective date of this chapter, shall be reduced by the amount of annuity allocable to the period of employment as a reemployed annuitant. (Mar. 3, 1979, D.C. Law 2-139, § 1103, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-341.5, 1-341.11, 1-341.13.

§ 1-341.4. Establishment of a basic compensation system for Career and Excepted Services employees.

(a) (1) In order to carry out the compensation policies of this chapter, the Mayor shall develop, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, a single pay system for all employees in the Career and the Excepted Service.

(2) The consultations with the Board of Education and with the Board of Trustees of the University of the District of Columbia shall commence no less than sixty (60) days prior to submission of the proposed pay system to the Council. Any comments that either the Board of Education or the Board of Trustees of the University of the District of Columbia wish to make on the proposed system shall be presented along with the proposed pay system submitted by the Mayor.

(b) This comprehensive system shall include, but need not be limited to, provisions for basic pay, pay increases based on quality and length of service, premium pay, allowances and severance pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations in the development of the comprehensive compensation system for Career Service employees.

(d) The Mayor shall submit, not later than September 1, 1979, the proposed comprehensive compensation system developed under this section to the Council for approval under provisions of section 1-341.6. (Mar. 3, 1979, D.C. Law 2-139, § 1104, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-341.5, 1-341.6.

§ 1-341.5. Maintenance of the comprehensive compensation system for Career and Excepted Services employees.

(a) The Mayor, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, shall provide for a periodic review of the basic compensation system, in order to improve the system and provide continuing conformity with the policy established by section 1-341.3.

(b) These reviews of compensation shall include, but need not be limited to, review of the adequacy of the rates of basic pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations of employees under his or her jurisdiction in the periodic reviews of the compensation system(s).

(d) The Mayor shall consider, on an annual basis, changes in the comprehensive compensation system(s) and in the rates of pay under the system(s), and submit these changes and adjustments to the Council in accordance with the provisions of section 1-341.4.

(e) Beginning on April 1, 1980, and on April 1st thereafter, the Mayor shall confer with the Board of Education and Board of Trustees of the University of the District of Columbia concerning proposed pay changes and adjustments and other proposed changes to the compensation system for approval under the provisions of section 1-341.6. Any such proposed changes, along with any comments of the Board of Education and the Board of Trustees of the University of the District of Columbia, shall be submitted to the Council no later than July 1, 1980, and July 1st of each year thereafter.

(f) Notwithstanding any other provision of law, any pay or compensation system or revision thereof submitted to the Council which provides for classification or pay based on longevity shall include an analysis of longevity and pay prepared by the submitting authority. Such analysis shall contain, but not be limited to, the following: (1) The potential average earnings of typical

entry level employees over typical projected careers leading to retirement; (2) typical career ladders, and their pay implications over those periods of time to complete the ladder to retirement; (3) the effect on the District of Columbia's future financial obligations of proposed plans or revisions thereof with respect to the treatment of longevity; and (4) a comparison with similar costs for the above items as contained within the system to be abandoned or modified by the proposal. (Mar. 3, 1979, D.C. Law 2-139, § 1105, 25 DCR 5470.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-341.6.

§ 1-341.6. Review by the Council of the District of Columbia.

(a) If the Council approves, without revision, the comprehensive compensation system(s), or any later changes in that system(s) or in the rates of pay under the system(s) proposed in accordance with section 1-341.4 or section 1-341.5, the pay rates shall become effective on the first day of the first pay period beginning on or after October 1st in the year in which the Mayor submits his or her pay changes as provided in subsection (e) of section 1-341.5.

(b) If the Council revises the proposal, it shall return the proposal with its revisions to the Mayor. If the Mayor concurs in the revisions, the provisions of the compensation plan as revised shall become effective on the first day of the first pay period beginning on or after October 1st, as provided in subsection (a) of this section.

(c) If the Mayor does not concur in any one or more of the revisions recommended by the Council, he or she shall return the revisions within ten (10) days to the Council, appending a statement of the reasons for not concurring. If the Council, by a two-thirds ($\frac{2}{3}$) vote of its members present and voting, insists upon any one or more of its original revisions, it shall return the proposal and the revisions upon which it insists to the Mayor within ten (10) days after reception from the Mayor. If revisions insisted upon by the Council include increases in the rate of pay different from those suggested by the Mayor, then the Council shall identify by act the source of funding for those pay increases insisted upon. The pay provisions of the compensation plan so adopted shall become effective on the first day of the first pay period beginning on or after the fiscal year beginning October 1st. If such a two-thirds ($\frac{2}{3}$) vote does not prevail, or the Council does not act on the proposal within ten (10) days of its reception of the Mayor's proposal, the formal proposal of the Mayor, including those revisions proposed by the Council to which the Mayor has concurred, shall become effective on the first day of the first full pay period beginning on or after the fiscal year which begins October 1st. (Mar. 3, 1979, D.C. Law 2-139, § 1106, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-341.4, 1-341.5.

§ 1-341.7. Executive pay plan.

(a) It is the intent of the District government to attract and retain the best available talent to fill subordinate agency head positions. To further this end, the Mayor may establish and maintain an executive pay plan.

(b) This section is applicable to any employee in the Executive Service.

(c) Rates of pay for persons in the Executive Service shall not exceed the rate of pay for the Mayor.

(d) The Mayor is authorized to issue rules and regulations to implement this section. Rates of pay for each position shall be set to reflect the nature of the duties and responsibilities of the job and the qualifications usually expected for similar work. The pay plan and rates of pay set under this section shall be published in the District of Columbia Register for the purposes of notice only and submitted to the Council for its consideration. The failure of the Council to disapprove any such rate of pay by resolution within sixty (60) calendar days of its receipt from the Mayor shall result in its adoption.

(e) The Mayor shall review, at least once each year, the rates of pay established under this section and make any necessary changes and adjustments to established rates. In proposing new pay rates, the Mayor is encouraged to consult with appropriate federal, state and local government officials, and representatives of private industry. Any annual adjustment shall be made in accordance with the provisions of subsection (d) of this section. (Mar. 3, 1979, D.C. Law 2-139, § 1107, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-341.8. Compensation for members of boards and commissions.

(a) The rate of pay for each member of any board or commission who receives compensation on January 1, 1980, except as otherwise provided in this chapter and in section 1-341.10 or 1-341.12, is one hundred twenty-five dollars (\$125) per diem or fifteen dollars and sixty-two cents (\$15.62) per hour, whichever provides less. This provision does not affect any annual ceiling established by law on January 1, 1980, and shall apply to all members of boards and commissions appointed before or after the effective date of this chapter. Should a member serve in excess of eight (8) hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of two (2) per diem payments for any consecutive twenty-four (24) hour period.

(b) Beginning with the year commencing January 1, 1983, and every four (4) years thereafter, the Mayor shall submit to the Council by no later than July 1st of each year all proposed pay changes and adjustments to this compensation system in the form of a proposed act. (Mar. 3, 1979, D.C. Law 2-139, § 1108, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.2, 1-336.1, 1-342.3, 1-1104, 2-103, 2-1234, 31-1714, 31-2004, 32-1319.

§ 1-341.9. Compensation for the Mayor and Members of the Council.

(a) The Mayor shall receive compensation in the amount of sixty thousand dollars (\$60,000) per year, which shall be made in equal and periodic installments.

(b) Each Member of the Council shall receive compensation in the amount of thirty-five thousand dollars (\$35,000) per year, which shall be made in equal and periodic installments. The Chairman of the Council shall receive an additional ten thousand dollars (\$10,000) per year.

(c) The compensation amounts in subsections (a) and (b) of this section shall be adjusted on the first day of the first pay period beginning on or after October 1st of each year by the percent change, adjusted to the nearest one-tenth ($\frac{1}{10}$) of one (1) per centum, in the price index published for July of the preceding year over the price index published for July of the current year: Provided, however, that any adjustment authorized under this subsection shall not exceed the average percentage salary adjustment authorized by the Council of the District of Columbia for the Career Service of the District of Columbia.

(1) The compensation amounts after adjustment under this subsection shall be fixed at the nearest five (5) dollars: Except, that such compensation amounts shall reflect, after adjustment, an increase of at least five dollars (\$5.00).

(2) For purpose of this subsection, the term “price index” shall mean the Consumer Price Index for All Urban Consumers (all items Washington, D.C. Standard Metropolitan Statistical Area average), published bi-monthly by the Bureau of Labor Statistics, United States Department of Labor in its official publication, Monthly Labor Review or in other official publications.

(3) On or before October 1st of each year the Mayor shall publish the adjusted compensation amounts under this subsection in the District of Columbia Register.

(Mar. 3, 1979, D.C. Law 2-139, § 1109, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-332.2, 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-341.10. Compensation for Members of the Board of Education.

The rate of pay for each Member of the District of Columbia Board of Education is fifty (50) percent of the established rate of pay for each Member of the Council. The President of the Board of Education shall receive an additional twenty-five hundred dollars (\$2,500) a year. (Mar. 3, 1979, D.C. Law 2-139, § 1110, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.2, 1-341.8, 31-101.

§ 1-341.11. Classification and compensation policies and procedures for educational employees.

(a) The classification of all positions in the Educational Service shall be in accordance with the policies of section 1-341.1.

(b) In order to carry out the policies of subsection (a) of this section, the District of Columbia Board of Education shall, for educational employees of the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall, for educational employees of the University of the District of Columbia, provide for the development of a classification system covering all positions. The respective Boards shall provide that all positions covered by this classification system are properly evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least sixty (60) calendar days prior to their proposed effective date. Each Board shall hold a public hearing on all such proposals it publishes in the District of Columbia Register prior to its adoption of a classification system or amendment to such system.

(c) Each Board shall provide that employees whose positions are covered in this classification system have the right to appeal the classification of their positions without restraint or fear of reprisal or prejudice as provided in subchapter VI of this chapter to the Office of Employee Appeals.

(d) Compensation for all employees in the Educational Service shall be fixed in accordance with the policies of section 1-341.3 (a) (1), (2), (3) and (4).

(e) The comprehensive compensation system authorized by subsection (d) of this section shall include, but not be limited to, provisions for basic pay, pay increases based on quality of and length of service, premium pay, allowances and severance pay.

(f) Each Board shall provide for appropriate consultations with employee organizations in the development of the comprehensive compensation system.

(g) Each Board shall submit, to the Mayor, not later than September 1, 1979, the proposed comprehensive compensation system developed under the provisions of subsections (d) and (e) of this section. Within twenty (20) days of the submission of the compensation proposal by the respective Boards to the Mayor, the Mayor shall transmit the compensation system to the Council in the form of a proposed act. The Mayor shall append a statement of his or her proposed adjustments to the comprehensive compensation systems as submitted by each Board including detailed reasons for his or her support or opposition.

(h) The Council shall consider the proposed compensation system in accordance with its procedures.

(i) (1) Each Board shall provide for the periodic review of the basic compensation system, in order to improve the system and provide continuing conformity with the policy established by subsection (a) of this section.

(2) These reviews of compensation shall include, but need not be limited to, a review of the adequacy of the rates of basic pay.

(3) Each Board shall provide for appropriate consultations with employee organizations of employees under their respective jurisdiction in the periodic reviews of the compensation system.

(4) Each Board shall consider, on an annual basis, changes in the comprehensive compensation system, and in the rates of pay under the system, and submit these changes and adjustments to the Council in accordance with the provisions of this section.

(5) Beginning with the year commencing January 1, 1980, each Board shall submit to the Council by no later than July 1st of each year all proposed pay changes and adjustments and other proposed changes to the compensation system for approval under the provisions of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 1111, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-334.4, 1-336.3.

§ 1-341.12. Compensation for members of the Public Employee Relations Board.

(a) Notwithstanding any other provision of this title, members of the Public Employee Relations Board shall receive compensation at the rate of two hundred fifty dollars (\$250) per day, or thirty-one dollars and twenty-five cents (\$31.25) per hour, whichever is less, while in the service of the said Board. Should a member serve in excess of eight (8) hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of two (2) per diem payments for any consecutive twenty-four (24) hour period.

(b) During the transition period, as provided in section 1-366.1 (c) (1), (2) and (3), a person serving on both the Board of Labor Relations and the Public Employee Relations Board shall receive compensation as provided in subsection (a) of this section.

(c) Beginning with the year commencing January 1, 1983, and every four (4) years thereafter, the Mayor shall submit to the Council by no later than July 1st of each such year all proposed pay changes and adjustments to this compensation system in the form of a proposed act. (Mar. 3, 1979, D.C. Law 2-139, § 1112, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Compiler's note. The reference to "section 1-366.1 (c) (1), (2) and (3)" in subsection (b) of this section is set out as originally enacted.

Section referred to in sections. 1-335.1, 1-341.8.

§ 1-341.13. Collective bargaining concerning compensation.

Collective bargaining concerning compensation is authorized as provided in sections 1-332.6 and 1-347.16. Such compensation bargaining shall preempt other provisions of this subchapter except as provided in this section. The principles of section 1-341.3 shall apply to compensation set under the provisions of this section.

(a) As provided in this section, the Mayor, the Board of Education, the Board of Trustees of the University of the District of Columbia, and each independent personnel authority, or any combination of the above (hereinafter referred to in this section as "management") shall meet with labor organization(s) (hereinafter referred to in this section as "labor") which has (have) been authorized to negotiate compensation at reasonable times in advance of the District's budget-making process to negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours and any other compensation matters.

(b) No earlier than one hundred and fifty (150) days before the expiration of any existing negotiated agreement between the parties, management shall begin a thorough study of the compensation being paid to comparable occupational groups of employees in other jurisdictions

in the Washington Standard Metropolitan Statistical Area and the nation's thirty largest cities by population. The Annual Study may include hours of work, health benefits and vacation time. The Annual Study shall also include the current percentage change in the Consumer Price Index for the Washington Metropolitan Area published by the Bureau of Labor Statistics, United States Department of Labor.

(c) (1) Management shall establish a Personnel Salary and Benefits Study Committee whose sole function shall be to conduct such Annual Study. The size of the Committee shall not exceed eight (8) members, equally divided among representatives appointed by management and those selected by labor.

(2) The Chairperson of the Personnel Salary and Benefits Study Committee shall be chosen by the members of the Committee, and shall not be an employee of the District of Columbia government or a member or employee of a labor organization on the Committee. If the Committee has not chosen a Chairperson after its first meeting, then the Chairperson shall be chosen expeditiously by the Executive Director of the Public Employee Relations Board, before the second meeting. The Chairperson of the Study Committee shall receive compensation at the maximum daily rate allowable by law for each day he or she is actually engaged in performing services under this section.

(d) (1) No earlier than ninety (90) days before the expiration of any existing negotiated agreement between the parties, the results of the Annual Study shall be made public and shall be available to the parties involved in negotiations.

(2) The results of the Annual Study may be updated at any time by any party to the negotiation. Such updates shall constitute supplements to the Annual Study and shall be made public and utilized in the same manner as the Annual Study pursuant to subsection (d) (1) of this section.

(e) (1) Negotiations among the parties to existing contracts shall begin on the earliest possible date following the publication of the Annual Study as is mutually agreeable, but in no event shall negotiations commence later than ninety (90) days before the expiration of said contracts, except when multi-year agreements are in effect. The failure of any party to begin negotiations within the ninety (90) day period, without the express written consent of all parties, shall constitute an automatic impasse. Any party may notify the Executive Director of the Public Employee Relations Board in writing of this automatic impasse. The Executive Director shall assist in the resolution of this automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the automatic impasse within thirty (30) days, or any shorter period designated by the mediator, the Executive Director shall then appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearings it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The award shall be issued within twenty (20) days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties in the dispute.

(2) Negotiations shall continue among the parties until a settlement is reached or until one hundred and eighty (180) days after negotiations have commenced. If the parties have failed to reach settlement on any issues by the one hundred and eightieth (180th) day, then an automatic impasse may be declared by any party. The declaring party shall promptly notify the Executive Director of the Public Employee Relations Board in writing of an impasse. The Executive Director shall assist in the resolution of this declared automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the declared automatic impasse within thirty (30) days, or any shorter period designated by the mediator, or before the automatic impasse date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for such automatic impasse arbitration. The award shall be issued within twenty (20) days after the Board has been

established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3) If the parties reach an impasse on any issues in negotiations before the declared automatic impasse date, any party shall promptly notify the Executive Director of the Public Employee Relations Board in writing. The Executive Director shall assist in the resolution of this impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the impasse within thirty (30) days, or any shorter period designated by the mediator, or before the automatic impasse date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for this impasse arbitration. The award shall be issued within twenty (20) days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(4) If the procedures set forth in paragraph (1), (2) or (3) of this subsection are implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both.

(5) The factfinder, mediator and any members of the Board of Arbitration appointed by the Executive Director of the Public Employee Relations Board shall be entitled to compensation at the maximum daily rate allowable by law for each day they are actually engaged in performing services under this section. Compensation for arbitration shall be divided equally and paid one-half ($\frac{1}{2}$) by management and one-half ($\frac{1}{2}$) by labor; compensation for mediation and fact-finding shall be paid by the moving party, or shared if by mutual request.

(f) Multi-year compensation agreements are encouraged. No compensation agreement shall be for a period of less than three (3) years. When multi-year agreements are negotiated, the Annual Study and the annual negotiations for the years in which a new contract is not being negotiated shall be suspended.

(g) Compensation negotiations pursuant to this section shall be confidential among the parties: Provided, however, that the Council may appoint observers from its membership and staff, or both, to the negotiations. Such Council observers will be responsible for informing the members of the Council of the progress of negotiations. All information concerning negotiations shall be considered confidential until impasse or settlement.

(h) Any settlement agreed to before September 15 of any year(s), including an arbitrator's award, shall be included in the Mayor's budget request in mid-September. Any other settlements shall be included in a supplemental budget request submitted by the Mayor. The Mayor shall fully support the passage of such settlement by every reasonable means before all legislative bodies.

(i) All labor relations settlements negotiated or otherwise determined pursuant to this section shall become effective by their terms, unless the Council rejects such settlement by a two-thirds ($\frac{2}{3}$) vote of its members within sixty (60) calendar days of its submission by the Mayor. In the event that the Council rejects any settlement by such two-thirds ($\frac{2}{3}$) vote, the settlement shall be returned to the parties for renegotiation with specific reasons for the rejection appended thereto. The Council shall have the authority to accept, modify or reject any settlement: Provided, however, that any modification shall be made only with the mutual consent of the parties to the settlement.

(j) Any settlement, including an arbitrator's award, shall be included in either the District budget request or in any supplemental budget request and shall be fully supported by the District by every reasonable means before Congressional bodies.

(k) Notwithstanding any provisions of subchapters XXI, XXII or XXVI of this chapter to the contrary, collective bargaining is permissible concerning the benefit programs authorized by these subchapters: Provided, however, that the Council shall adopt such agreement by act.

(l) Where the Public Employee Relations Board is required to determine an appropriate bargaining unit for the purpose of compensation negotiations, pursuant to section 1-347.16, the

Annual Study provided for in subsection (b) of this section shall begin no later than thirty (30) days after the Board's determination and shall be concluded and published within ninety (90) days of said determination. Negotiations for compensation between management and the exclusive representative of said unit shall begin within sixty (60) days after publication of the Annual Study. The timetable for the conduct and conclusion of such negotiations shall be that provided for in subsection (e) of this section. The Mayor shall negotiate agreements concerning working conditions at the same time as he or she negotiates compensation issues. (Mar. 3, 1979, D.C. Law 2-139, § 1113, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-347.16, 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-341.14. Pay setting for firefighters, police officers and teachers for the fiscal year ending September 30, 1979 and September 30, 1980.

(a) (1) The Mayor of the District of Columbia shall ascertain the average percentage increase to be used by the President of the United States in adjusting rates of pay (to be effective October 1, 1978 and October 1, 1979, respectively) under section 5305 (a) (2) of Title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under section 5305 (c) of Title 5 of the United States Code, and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in section 4-823 (a) and in section 31-1501, on the first pay period after October 1, 1978 and October 1, 1979, respectively, to reflect the average percentage increase given to General Schedule employees. If the alternative plan of the President of the United States becomes effective as provided in section 5305 of Title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under such alternative plan. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage increase of the Presidential adjustments of rates of pay under section 5306 (n) of Title 5 of the United States Code.

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under this section shall be effective on and payable for the first day of the first pay period beginning on or after October 1, 1978 and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay, which become effective under this section, shall be the rates of pay for each class and service step concerned, as if those rates had been set by statute, and shall remain in effect until amended by the Council of the District of Columbia.

(c) The rates of pay established under this section shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this section.

(d) The rates of pay that take effect under this section shall be published in the District of Columbia Register.

(e) (1) Retroactive compensation or salary shall be paid by reason of the amendments made by this chapter only in the case of an individual in the service of the District of Columbia government, the Board of Education of the District of Columbia or of the United States (including service in the Armed Forces of the United States) on the effective date of this section: Except, that such retroactive compensation or salary shall be paid:

(A) to any employee covered by this section who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1978 and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter for services rendered during such period; and

(B) in accordance with the provisions of subchapter VIII of chapter 55 of Title 5 of the United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first pay period which began on or after October 1, 1978 or October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter by any such employee who dies during such period.

(2) For the purpose of this subsection, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States, or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

(3) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of Title 5 of the United States Code (relating to government employees' group life insurance), all changes in rates of compensation or salary which result from the enactment of this chapter shall be held and considered to be effective as of the effective date of this chapter.

(f) The process, as set forth in subsection (a) of this section, whereby the salaries of the District of Columbia police, firefighters and teachers are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1978 and ending on September 30, 1980. (Mar. 3, 1979, D.C. Law 2-139, § 1114, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter XII.—Hours of Work and Legal Holidays

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-342.1. Hours of work.

(a) A basic administrative workweek of forty (40) hours is established for each full-time employee and the hours of work within that workweek shall be performed within a period of not more than six (6) of any seven (7) consecutive days: Except, that

(1) the basic workweek for uniformed members of the Firefighting Division of the District of Columbia Fire Department shall not exceed forty-eight (48) hours and the Division shall operate under a two (2) shift system with all hours of duty of either shift being consecutive; and

(2) the basic workweek and hours of work for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards: Provided, however, that the basic work scheduling for all employees in recognized collective bargaining units shall be subject to collective bargaining, and collective bargaining agreements shall take precedence over the provisions of this subchapter.

(b) Except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, tours of duty shall be established to provide, with respect to each employee in an organization, that:

(1) assignments to tours of duty are scheduled in advance over periods of not less than one (1) week;

(2) the basic forty (40) hour workweek is scheduled on five (5) days, Monday through Friday when practicable, and the two (2) days outside the basic workweek are consecutive;

(3) the working hours in each day in the basic workweek are the same;

(4) the basic nonovertime workday may not exceed eight (8) hours;

(5) the occurrence of holidays may not affect the designation of the basic workweek; and

(6) breaks in working hours of more than one (1) hour may not be scheduled in a basic workday except under rules and regulations on flexible work schedules as provided in subsection (e) below.

(c) Special tours of duty, of not less than forty (40) hours, may be established to enable employees to take courses in nearby colleges, universities or other educational institutions that will equip them for more effective work in the District government. Premium pay may not be paid to an employee solely because his or her special tour of duty results in his or her working on a day or at a time of day for which premium pay is otherwise authorized.

(d) To the maximum extent practicable, time to be spent by an employee in a travel status away from his or her official duty station shall be scheduled within the regularly scheduled workweek of the employee.

(e) The Mayor shall issue rules and regulations governing hours of work. Such rules and regulations shall provide for the use of flexible work schedules within the forty (40) hour workweek when such schedules are considered both practicable and feasible. (Mar. 3, 1979, D.C. Law 2-139, § 1201, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-342.2. Legal holidays.

(a) Legal public holidays are as follows:

New Year's Day, January 1st of each year;

Dr. Martin Luther King Jr.'s Birthday, January 15th of each year;

Washington's Birthday, the third Monday in February of each year;

Memorial Day, the last Monday in May of each year;

Independence Day, July 4th of each year;

Labor Day, the first Monday in September of each year;

Columbus Day, the second Monday in October of each year;

Veterans Day, November 11th of each year;

Thanksgiving Day, the fourth Thursday in November of each year; and

Christmas Day, December 25th of each year.

(b) For purposes of pay and leave with respect to a legal public holiday listed above and any other day designated to be a legal holiday by the Mayor, the following rules and regulations shall apply:

(1) for full-time employees whose basic workweek is Monday through Friday, if a legal holiday occurs on Saturday, the Friday immediately before is a legal public holiday and if a legal holiday occurs on Sunday, the Monday immediately following is a legal public holiday;

(2) for full-time employees whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-workday is a legal public holiday for the employee; and

(3) for part-time employees a legal holiday or a day designated as a holiday under paragraph (1) above which falls on the employee's regularly scheduled workday is a legal public holiday for the employee.

(c) January 20th of each fourth year starting in 1981, Inauguration Day, is a legal public holiday for the purpose of pay and leave of employees scheduled to work on that day. When January 20th of any fourth year falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purposes of this section.

(d) When an employee, having a regularly scheduled tour of duty is relieved or prevented from working on a day District agencies are closed by order of the Mayor, he or she is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

(e) The Mayor shall prescribe rules and regulations governing the pay and leave of employees in connection with legal public holidays and other designated non-work days.

(f) The Board of Trustees of the University of the District of Columbia shall have authority to establish not more than three (3) additional holidays to honor persons or events germane to academic interests. (Mar. 3, 1979, D.C. Law 2-139, § 1202, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-342.3. Leave.

(a) All employees shall be entitled to earn annual and sick leave as provided herein, except:

(1) educational employees under the Board of Education or Board of Trustees of the University of the District of Columbia. The leave system for such employees shall be established by rules and regulations promulgated by the respective Boards;

(2) an intermittent employee who does not have a regularly scheduled tour of duty;

(3) elected officials;

(4) members of boards and commissions whose pay is fixed under section 1-341.8; or

(5) a temporary employee appointed for less than ninety (90) days: Provided, however, that leave for all employees included within recognized collective bargaining units shall be subject to collective bargaining and collective bargaining agreements shall take precedence over the provisions of this subchapter.

(b) The days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and non-work days. The annual leave provided by this section, including annual leave that will accrue to an employee during the year, may be granted at any time during the year by the appropriate personnel authority.

(c) An employee who accepts a position excepted from these provisions under subsection (a) above, without a break in service, may elect either a lump-sum payment for any unused annual leave or have such leave retained for recrediting purposes if he or she returns to a position covered by these provisions.

(d) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments, or to have the excess leave carried forward as a charge against later accruing annual leave, unless repayment is waived as provided under subchapter XXIX of this chapter.

(e) An employee is entitled to annual leave with pay which accrues as follows:

(1) one-half ($\frac{1}{2}$) day for each full biweekly pay period for an employee with less than three (3) years of federal or District government service;

(2) three-fourths ($\frac{3}{4}$) day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth ($1\frac{1}{4}$) days, for an employee with three (3) but less than fifteen (15) years of federal or District government service; and

(3) one (1) day for each full biweekly pay period for an employee with fifteen (15) or more years of federal or District government service.

For the purposes of this subsection, an employee is deemed employed for a full biweekly pay period if he or she is employed during the days within that period, exclusive of legal holidays and non-work days which fall within his or her basic administrative workweek. A part-time employee serving on a prearranged scheduled tour of duty is entitled to earn leave as provided above on a pro rata basis. Leave accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid based on biweekly pay periods. A change in the rate of accrual of annual leave by an employee under this subsection takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(f) In determining years of service for leave accrual purposes, an employee is entitled to credit for all service creditable under section 8332 of Title 5 of the United States Code for annuity purposes under Civil Service Retirement. An employee who is a military retiree is entitled to

credit for active military service only if his or her retirement was based on disability resulting from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 301 of Title 38 of the United States Code. The determination of years of service may be made on the basis of an affidavit of the employee.

(g) An employee whose current employment is limited to less than ninety (90) days is entitled to annual leave only after being currently employed for a continuous period of ninety (90) days under successive temporary appointments without a break in service. After completing the ninety (90) days period, the employee is entitled to be credited with the leave that would have accrued to him or her since the date of his or her initial temporary appointment.

(h) Annual leave which is not used by an employee accumulates for use in succeeding years until it totals not more than thirty (30) days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a calendar year.

(1) Annual leave in excess of thirty (30) days which was accumulated under an earlier statute remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year until the employee's accumulated leave does not exceed thirty (30) days.

(2) Annual leave which is lost due to administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the annual leave was scheduled in advance, shall be restored to the employee:

(A) Restored annual leave which is in excess of thirty (30) days shall be credited to a separate leave account for the employee and shall be available for use by the employee for a period of two (2) years. Restored leave shall be included in a lump-sum payment if unused and still available upon the separation of the employee.

(B) Annual leave otherwise accruable after June 30, 1960, which is lost because of administrative error and is not recredited because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three (3) years immediately following the date on which the error is discovered.

(i) When an individual who received a lump-sum payment for leave is reemployed before the end of the period covered by the lump-sum payment, except in a position excepted under subsection (a) of this section, he or she shall refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

(j) An employee is entitled to sick leave with pay which accrues on the basis of one-half ($\frac{1}{2}$) day for each full biweekly pay period: Except, that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department on the basis of two-fifths ($\frac{2}{5}$) of a day for each full biweekly pay period. Sick leave may not be charged to the account of a uniformed member of the Metropolitan Police Department or the Fire Department for an absence due to injury or illness resulting from the performance of duty.

(k) The annual and sick leave to the credit of a federal employee who transfers to the District government without a break in service will be transferred to the credit of the employee under the District government leave system. The annual and sick leave to the credit of an employee who transfers from a position under a different leave system(s) without a break in service shall be transferred on an adjusted basis under rules and regulations prescribed by the Mayor.

(l) An employee is entitled to leave, without loss of pay, leave or credit for time of service, during a period of absence in which he or she is summoned, in connection with a judicial proceeding, by a court or other authority responsible for the conduct of that proceeding to serve as a juror or as a witness on behalf of any party in connection with judicial proceeding to which the United States, the District of Columbia, or a state or local government is a party.

(m) An employee is entitled to leave without loss in pay leave or service for each day, not in excess of fifteen (15) days in a calendar year, in which he or she is on active duty or is engaged

in field or coast defense training under sections 502 through 505 of Title 32 of the United States Code as a Reserve member of the Armed Forces or member of the National Guard. An employee who is a member of a Reserve Component of the Armed Forces, as described in section 261 of Title 10 of the United States Code, or the National Guard, as described in section 101 of Title 32 of the United States Code and performs, for the purpose of providing military aid to enforce the law, the following:

(1) federal service under section 331, 332, 333, 3500 or 8500 of Title 10 of the United States Code or other provision of law, as applicable; or

(2) full-time military service for his or her state, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, or a territory of the United States is entitled during and because of such service to leave without loss of pay, leave or credit for service. Leave granted by this paragraph shall not exceed twenty-two (22) workdays in a calendar year. An employee who is a member of the National Guard of the District of Columbia is entitled to leave without limitation and without loss in pay or time for each day of a parade or encampment ordered or authorized under former section 39-608. This provision covers each day of service in the National Guard, or a portion thereof, an employee is ordered to perform by the commanding general. An amount (other than travel, transportation, or per diem allowance) received by an employee for military service as a member of the Reserve or National Guard for a period for which he or she is entitled to military leave shall be credited against the pay due the employee for the same period.

(n) An employee is entitled to not more than three (3) days of leave without loss of or reduction in pay, leave or service to make arrangements for or attend the funeral or memorial service for an immediate relative who died as a result of wound, disease or injury incurred while serving as a member of the Armed Forces in a combat zone.

(o) The Mayor is authorized to issue necessary rules and regulations to implement the provisions of this section.

(p) In units where exclusive recognition has been granted, the Mayor or an appropriate personnel authority may enter into agreements with the exclusive bargaining agent to continue employee coverage under the provisions of this chapter while an employee(s) serves in a full-time or regular part-time capacity with a labor organization at no loss in benefits to the individual employee(s): Provided, however, that the cost to the District shall be paid by the labor organization while the employee(s) is so engaged, and: Provided, further, that this provision shall not limit the negotiability or use of official time by unit employees for the purposes of investigation, processing and resolving grievances, complaints or any and all other similar disputes.

(q) After advising his or her supervisor, an employee is entitled to utilize up to ten (10) hours of administrative leave for the purpose of responding to adverse actions initiated under the provisions of subchapter XVI of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 1203, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XIII.—Employee Development

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-343.1. Programs for employee development.

(a) The Mayor and the District of Columbia Board of Education shall each install and maintain programs for the training and development of their respective employees through planned courses, systems or other instruction or education in fields which are or will be related to the performance of official duties for the District, in order to increase their knowledge, proficiency, ability, skill and qualifications in the performance of these duties. This system of training shall

be created to ensure that the principles of efficiency, economy and equitable treatment for all employees is carried out for the successful operation of the District government.

(b) When educational facilities under the control and direction of the District government are not the most economical available to carry out the provisions of this section, the Mayor and the District of Columbia Board of Education may make arrangements and agreements with colleges, universities, educational institutions, appropriate institutions or corporations. The appropriate personnel authority shall have the authority to enter into these arrangements and agreements for employee development. The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning what items must be included in agreements for employee development activities relying on non-District facilities.

(c)(1) An employee shall not suffer a loss in pay, tenure or other rights and benefits by reason of participation in any training or career development program when such participation has been approved or authorized by the District government.

(2) The District may (A) pay all or a part of the pay of an employee selected and assigned for training under this section (except overtime, holiday, night or Sunday premium pay); and (B) pay all or a part of the necessary expenses of the training, including the employee's costs of travel, subsistence, transportation, tuition, fees, books and related materials; and membership fees to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent for the training. The prohibition in this subsection on payment of premium pay may be waived when the Mayor determines that payment of premium pay would be in the interests of equity and good conscience or in the public interest.

(d)(1) An employee selected for training under this section in a university, college or other educational institution not controlled by the District shall agree in writing with the District that he or she will (A) continue in the service of the District after the end of the training period for a period of time at least equal to the length of the training period, unless he or she is involuntarily separated from that service; and (B) pay to the District the amount of expenses incurred by it in connection with the training, other than his or her pay, if he or she voluntarily leaves that service before the end of the period for which he or she had agreed to serve.

(2) If an employee fails to fulfill the agreement under this subsection to pay the expenses of the training, a sum equal to those expenses is recoverable by the District from the employee, or his or her estate, by setoff against pay, amount of retirement credit, or other amount due the employee from the District.

(3) The right of recovery under paragraph (2) of this subsection may be waived, in whole or in part, by the Mayor and the District of Columbia Board of Education if recovery would be against equity and good conscience, or against the public interest.

(4) The Mayor and the District of Columbia Board of Education may exempt from the requirement for entering into a written agreement under this subsection the following:

(A) an employee selected for training that does not exceed eighty (80) hours within a single program;

(B) an employee selected for training which is given through a correspondence course; and

(C) an employee selected for training in a manufacturer's training facility, if that training is the direct result of the lease or purchase of that manufacturer's product by the District government.

(e) The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning the implementation of this subchapter, consistent with equal employment opportunities and standards.

(f) The head of each District agency shall prepare an annual employee development plan which identifies subject matter areas where training is needed, the types of programs and courses which could be used to meet those identified training needs and the types of training activities which will be carried out in the coming year:

(1) The annual employee development plan should also evaluate the impact and success of prior training and employee development activities. Cost figures should include employee pay and benefit expenses while engaged in training on official time, tuition expenses and other fees, travel costs and other appropriate items; and

(2) The Council may review and inspect all plans developed in accordance with this subsection.

(g) Programs developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations. (Mar. 3, 1979, D.C. Law 2-139, § 1301, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XIV.—Performance Evaluation

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-344.1. Performance-rating plans.

For the purpose of recognizing the merits of employees and their contributions to efficiency and economy in the District, the Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia (for non-Educational employees under its jurisdiction) shall establish and use a performance-rating plan for evaluating the work performance of employees under their respective jurisdiction. The performance rating plan shall be established after negotiation with appropriate labor organizations. (Mar. 3, 1979, D.C. Law 2-139, § 1401, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-344.2. Performance-rating plan; requirement.

The performance-rating plan shall be as simple as possible and shall provide the following:

- (a) that written performance requirements shall be established and shall be made known to all employees;
- (b) that performance of the employee be fairly appraised in relation to the requirements;
- (c) that appraisals be used to improve employee performance;
- (d) that supervisor-employee relationships be strengthened;
- (e) that each employee be kept currently advised of his or her performance and promptly notified of his or her performance rating;
- (f) that each employee shall be rated annually; and
- (g) for the appropriate inclusion of evaluations by members of the public whom the employee serves.

(Mar. 3, 1979, D.C. Law 2-139, § 1402, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-344.3. Ratings for performance.

(a) Each performance-rating plan shall provide for ratings representing at least five (5) levels:

- (1) outstanding performance;
- (2) above average performance;
- (3) average performance;
- (4) below average performance;
- (5) unsatisfactory performance.

(b) A performance rating of outstanding may be given only when all aspects of performance not only exceed normal requirements but are outstanding and deserve special commendation.

(c) An employee may be rated unsatisfactory only after a ninety (90) day advance warning period. The employee shall be advised by the person responsible for performing the rating that

a ninety (90) day period is afforded to allow the employee to demonstrate average performance. A removal action resulting from an unsatisfactory performance rating must be accomplished through the adverse action procedures set forth in subchapter XVI of this chapter, unless otherwise provided by a negotiated contract.

(d) Outstanding and unsatisfactory performance ratings must be approved by the agency head or his or her designee. (Mar. 3, 1979, D.C. Law 2-139, § 1403, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-344.4. Review of ratings.

(a) An agency head, on the written request of an employee of that agency, may provide one (1) impartial review of the performance rating of the employee.

(b) Each agency shall establish a board of review to consider and pass on the merits of performance ratings under the rating plan established under this subchapter. The board of review shall have three (3) members, one (1) member designated by the head of the agency, one (1) member designated by the employees of the agency in the manner prescribed by the Mayor and one (1) member, who shall serve as chairperson, designated by the Mayor. Alternate members are designated in the same manner as their respective principals.

(c) At the hearing the appellant and representatives of the agency are entitled to submit pertinent information and to hear or examine, and reply to, information submitted by others. After the hearing, the board of review shall confirm the appealed rating or make such changes in the rating as it considers proper. The agency shall then effect the decision of the board. The agency or an employee may seek review of the decision of the board before the Office of Employee Appeals, but such an appeal shall not serve to stay the decision of the board.

(d) The provisions of this section shall not apply to the review of performance ratings of employees covered by a collective bargaining agreement which provides an exclusive means of reviewing performance ratings. (Mar. 3, 1979, D.C. Law 2-139, § 1404, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-344.5. Other rating procedures prohibited.

An employee may not be given a performance rating, regardless of the name given to the rating, and a rating may not be used as a basis for any action, except under the performance rating plan as authorized by this chapter unless provided otherwise by a negotiated contract. (Mar. 3, 1979, D.C. Law 2-139, § 1405, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XV.—Employee Rights and Responsibilities

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-345.1. Declaration of purpose.

The Council of the District of Columbia declares as its policy to:

(a) enhance the rights of District employees to challenge the actions or failures of their agencies and to express their views without fear of retaliation through appropriate channels within the agency, complete and frank responses to Council inquiries, free access to law-enforcement officials, oversight agencies of both the executive and legislative branches of government, and appropriate communication with the public;

(b) ensure that acts of the Council enacted to protect individual citizens are properly enforced;

(c) provide new rights and remedies to guarantee and to ensure that public offices are truly public trusts;

(d) hold public employees personally accountable for failure to enforce the laws and for negligence in the performance of their public duties;

(e) ensure the rights of employees to expose corruption, dishonesty, incompetence, or administrative failure are protected;

(f) guarantee the rights of employees to contract and communicate with the Council and be protected in that exercise;

(g) protect employees from reprisal or retaliation for the performance of their duties; and

(h) motivate employees to do their duties justly and efficiently.

(Mar. 3, 1979, D.C. Law 2-139, § 1501, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-345.2. Employee bill of rights.

Employees shall have the following rights:

(a) the right to freely express their opinions on all public issues, including those related to the duties they are assigned to perform: Provided, however, that any agency may promulgate reasonable rules and regulations requiring that any such opinions be clearly disassociated from that agency's policy;

(b) the right to disclose information unlawfully suppressed, information concerning illegal or unethical conduct which threatens or which is likely to threaten public health or safety or which involves the unlawful appropriation or use of public funds, and information which would tend to impeach the testimony of employees of the District government before Committees of the Council or the responses of such employees to inquiries from members of the Council concerning the implementation of programs, information which would involve expenditure of public funds, and the protection of the constitutional rights of citizens and the rights of government employees under this chapter and under any other laws, rules or regulations for the protection of the rights of employees; Provided, however, that nothing in this section shall be construed to permit the disclosure of the contents of personnel files, personal medical reports or any other information in such a manner as to invade the individual privacy of an employee or citizen of the United States except as otherwise provided in this chapter.

(c) the right to communicate freely and openly with members of the Council and to respond fully and with candor to inquiries from Committees of the Council, and from members of the Council: Provided, however, that nothing in this section shall be construed to permit the invasion of the individual privacy of other employees or of citizens of the United States;

(d) the right to assemble in public places for the free discussion of matters of interest to themselves and to the public and the right to notify, on their own time, fellow employees and the public of such meetings;

(e) the right to humane, dignified and reasonable conditions of employment, which allow for personal growth and self-fulfillment, and for the unhindered discharge of job responsibilities; and

(f) the right to individual privacy: Provided, however, that nothing in this section shall limit in any manner an employee's access to his or her own personnel file, medical report file, or any other file or document concerning his or her status or performance within his or her agency, except as otherwise provided in subchapter XXXI of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 1502, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-345.3. Complaints of criminal harassment for appearances and testimony before the Council.

(a) It shall be unlawful for any agency head or his or her designee to coerce, harass or take any retaliatory actions against subordinate employees appearing as witnesses before the Council or any of its committees.

(b) Any complaint alleging coercion and harassment by agency heads of subordinate employees appearing as witnesses before or submitting testimony to the Council shall be promptly investigated by the Corporation Counsel for the District of Columbia. Within three (3) months after the filing of a complaint, the Corporation Counsel shall render a decision on whether or not prosecution under this section is warranted. If the Corporation Counsel decides prosecution is not warranted, he or she shall state with specificity the facts and reasons upon which such decision is based.

(c) If the Corporation Counsel renders a decision pursuant to this section that prosecution is not warranted, or if he or she fails to render a decision as required by this section, any citizen may petition the Superior Court of the District of Columbia for an order to compel prosecution. If the Court finds, after an independent review of the evidence, that a prima facie case exists, it shall order prosecution to be commenced.

(d) In its independent review of the evidence, the Court shall have access to the enforcement file of the Corporation Counsel and to all other relevant documents or files.

(e) In addition to any other civil penalty or administrative sanction which may be available to an employee against a person who violates the provisions of this section, a person found to be in violation of subsection (a) of this section may be fined up to five thousand dollars (\$5,000) or sentenced to one (1) year in prison, or both. The Corporation Counsel shall prosecute violations of this section in the name of the District of Columbia.

(f) Should the Corporation Counsel decline to prosecute following a direction to do so as provided in subsection (c) of this section, an employee aggrieved under the provisions of this subsection may initiate a civil action against the District of Columbia and the agency head or his or her designee in the Superior Court of the District of Columbia. Following a trial on the merits, the Court may award civil damages in an amount not to exceed five thousand dollars (\$5,000) against any or all of the defendants, plus reasonable attorneys' fees and costs. Interest shall be recoverable from the date the Corporation Counsel was directed to initiate a criminal prosecution pursuant to subsection (c) of this section but declines to do so. (Mar. 3, 1979, D.C. Law 2-139, § 1503, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-346.1.

§ 1-345.4. Public employees as fiduciaries.

(a) For purposes of this section, "Consumer Protection Law" shall include any law intended to protect, or which does in fact protect, individual consumers from unfair, deceptive or misleading acts or practices; or the nondisclosure of product quality, weight, size or performance. Any employee who administers, enforces or implements any health, safety, environmental or consumer protection law, or any rules and regulations promulgated for the enforcement of such laws, is a fiduciary to any individual or class of individuals intended to be protected, or who are in fact protected, from injury or harm, or risk of injury or harm, by laws, rules and regulations, and, as a fiduciary, is obligated to protect such individual or class of individuals.

(b) Any individual or class of individuals may commence a civil action on his or her or their own behalf against any employee or employees in any agency for breach of a fiduciary duty upon showing that said employee or employees by his or her or their acts or omissions has or have exposed said individual or class of individuals to an injury or harm, or risk of injury or harm, from which they are to be protected by the employee or employees. Such action may be brought in the Superior Court of the District of Columbia. The District of Columbia, through the

Corporation Counsel, shall defend any employee or employees against whom such action is commenced. Such employee or employees may, however, at his or her or their option, provide for his or her or their own defense.

(c) If the Court finds that any employee or employees have breached their fiduciary duty by any act or omission or by any series of acts or omissions, the Court shall do the following:

(1) order performance or cessation of performance, as appropriate; and

(2) take any other appropriate action, including the assessment of fines not to exceed one thousand dollars (\$1,000), against any employee or employees within the agency who has or have breached the duties of the fiduciary relationship.

(Mar. 3, 1979, D.C. Law 2-139, § 1504, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-345.5. Curbing fraud and conflicts of interest.

(a)(1) Any citizen shall have a right to commence a suit in the Superior Court of the District of Columbia on behalf of the District government to recover funds which have been improperly paid by the District government while there exists any conflict of interest on the part of the employee or employees directly or indirectly responsible for such payment.

(2) It shall be an affirmative defense to any action under this section that the defendant did not know or have reason to know of the conflict of interest.

(b) Any citizen who commences a suit under this section shall be entitled to ten percent (10%) of the amount recovered for the District. The prevailing party shall recover reasonable attorney's fees and other costs incidental to the action.

(c) The right of a citizen to commence and maintain a suit under this section shall continue notwithstanding any action taken by the Corporation Counsel or any United States Attorney: Provided, however, that if the District shall first commence suit, a citizen may not commence a suit under this section: Provided, further, however, that if the District shall fail to carry on such suit with due diligence within a period of six (6) months or within such additional time as the Court may allow, a citizen may commence a suit under this section and such suit shall continue notwithstanding any action taken by the Corporation Counsel or any United States attorney. (Mar. 3, 1979, D.C. Law 2-139, § 1505, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XVI.—Adverse Actions and Grievances

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-346.1. Adverse actions.

(a) The Mayor, the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations establishing internal agency corrective, rather than punitive, measures. Adverse action procedures shall not be in conflict with these corrective measures nor with any provisions of this subchapter. Such rules and regulations may provide for reprimands and for suspensions for thirty (30) days or less. The appropriate personnel authority shall administer the disciplinary procedures established under this subsection, subject to the provisions of subchapter VI of this chapter. The extent of the corrective action shall reflect the severity of the infraction.

(b) A permanent employee in the Career or Educational Services who is not serving a probationary period or an employee appointed under the authority of section 1-339.4 (b) and serving for at least one (1) year with average performance may be suspended for more than thirty (30) days, reduced in rank or pay, furloughed without pay or removed from the service only for cause and only in accordance with the provisions of this subchapter and subchapter VI

of this chapter. The extent of the corrective action shall reflect the severity of the infraction.

(c) The Office of Employee Appeals shall be the final administrative appellate authority with respect to adverse action appeals by all District employees, subject to judicial review.

(d) For the purposes of this section, cause shall be defined as follows:

- (1) fraud in securing appointment or falsification of official records;
- (2) incompetency;
- (3) inefficiency;
- (4) inexcusable neglect of duty;
- (5) insubordination;
- (6) dishonesty;
- (7) drunkenness on duty;
- (8) on-duty use of drugs not prescribed and/or obtained illegally;
- (9) inexcusable absence without leave;
- (10) conviction of a felony. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony is deemed to be a conviction within the meaning of this section. Notwithstanding the foregoing, cause under this paragraph with regard to uniformed members of the Metropolitan Police Department is deemed to be the commission of any act which would constitute a crime;
- (11) discourteous treatment of the public, supervisor, or other employees;
- (12) improper political activity except as otherwise permitted by this chapter or the Constitution;
- (13) willful disobedience except as authorized in this chapter;
- (14) misuse, mutilation or destruction of District property or funds;
- (15) refusal to take and subscribe any oath or affirmation which is required by this law in connection with his or her employment;
- (16) other failure of good behavior during duty hours which is of such a nature that it causes discredit to his or her agency or his or her employment. Notwithstanding the foregoing, the provisions of this paragraph shall be applicable to uniformed members of the Metropolitan Police Department during both on-duty and off-duty hours;
- (17) engaging in a strike;
- (18) misuse of official position or unlawful coercion of an employee for personal gain or benefit;
- (19) lack of dependability;
- (20) a finding by the Office of Employee Appeals, the Office or Commission on Human Rights or a court of competent jurisdiction in the District of Columbia that the employee has engaged in violation of the guarantees in subchapters I and VII of this chapter in the performance of that employee's official duties; or
- (21) a finding that the employee has violated the provisions of subchapter XVIII or section 1-345.3 of this chapter.

(e) The provisions of this subchapter shall also apply to employees who are reduced in grade or pay as a result of a classification action affecting the employees' positions. (Mar. 3, 1979, D.C. Law 2-139, § 1601, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-346.3.

§ 1-346.2. Grievances.

The Mayor, the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations providing procedures for the prompt handling of grievances of employees and applicants for employment. The grievance system shall be made known to all employees and shall be consistent with the procedures, policies and guidelines set forth in pertinent District personnel rules and regulations. The grievance system shall provide for the expeditious adjustment of grievances and complaints and the

prompt taking of appropriate corrective action when the complaint or grievance is, upon review, found to be justified. (Mar. 3, 1979, D.C. Law 2-139, § 1602, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-346.3.

§ 1-346.3. Procedures and appeals.

(a) An individual in the Career and Educational Services against whom an adverse action is recommended in accordance with this subchapter is entitled to reasons, in writing, and to the following:

- (1) notice of the action sought and of charges preferred against him or her;
- (2) a copy of the charges;
- (3) a reasonable time for filing a written answer to the charges, with affidavits; and
- (4) a written decision on the answer within a forty-five (45) calendar days of the date that charges are preferred.

Examination of witnesses, a trial or hearing is not required, but may be provided at the discretion of the individual or individuals who are responsible for handling the adverse actions. Copies of the charges, the notice of hearing, the answer, the decision and the reasons therefor shall be made a part of the records of the agency and, on request, shall be furnished to the individual affected and to the Office of Employee Appeals.

(b) An appeal from decisions effected under sections 1-346.1 and 1-346.2 may be made to the Office of Employee Appeals. When, upon appeal, any adverse action or decision by an agency on an employee initiated grievance is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the appellate authority shall be taken in accordance with the provisions of subchapter VI of this chapter within thirty (30) days of the appellate decision.

(c) An appeal under subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for members of a labor organization in a bargaining unit. Any adverse action to be effected may only be for causes as specified in this subchapter. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee. (Mar. 3, 1979, D.C. Law 2-139, § 1603, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XVII.—Labor-Management Relations

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-347.1. Policy.

The District of Columbia government finds and declares that an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public.

(a) Each employee of the District government has the right, freely and without fear of penalty or reprisal: (1) To form, join and assist a labor organization or to refrain from this activity; (2) to engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative; and (3) to be protected in the exercise of these rights.

(b) The Mayor or appropriate personnel authority, including his or her or its duly designated representative(s), shall meet at reasonable times with exclusive employee representatives to bargain collectively in good faith.

(c) Subsection (a) of this section does not authorize participation in the management of a labor organization or activity as a representative of such an organization by a supervisor, or management official or by an employee when the participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee. Supervisor means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The definition of supervisor shall include an incumbent of a position which is classified at a level higher than it would have been had the incumbent not performed some or all of the above duties.

(Mar. 3, 1979, D.C. Law 2-139, § 1701, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.2. Labor-management relations program.

(a) The Public Employee Relations Board (hereinafter in this subchapter referred to as the "Board") shall issue rules and regulations establishing a labor-management relations program to implement the policy set forth in this subchapter.

(b) The labor-management relations program shall include: (1) A system for the orderly resolution of questions concerning the recognition of majority representatives of employees; (2) the resolution of unfair labor practice allegations; (3) the protection of employee rights as set forth in section 1-347.6; (4) the right of employees to participate through their duly-designated exclusive representative in collective bargaining concerning terms and conditions of employment as may be appropriate under this chapter and rules and regulations issued pursuant thereto; (5) the scope of bargaining; (6) the resolution of negotiation impasses concerning matters appropriate for collective bargaining; and (7) any other matters which affect employee-employer relations.

(c) Impasse resolution machinery may include, but need not be limited to, the following:

- (1) mediation;
- (2) fact-finding;
- (3) advisory arbitration;
- (4) request for injunction;
- (5) binding arbitration;
- (6) final best offer binding arbitration; and
- (7) final best offer binding arbitration item by item on non-compensation matters.

(d) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, further negotiation appears to be unproductive to the Board, an impasse shall be deemed to have occurred. Where deemed appropriate, impasse resolution procedures may be conducted by the Board, its staff or third parties chosen either by the Board or by the mutual concurrence of the parties to the dispute. Impasse resolution machinery may be invoked by either party or on application of the Board. The choice of the form(s) of impasse resolution machinery to be utilized in a particular instance shall be the prerogative of the Board, after appropriate consultation with the interested parties. In considering the appropriate award for each impasse item to be resolved, any third party shall consider at least the following criteria:

- (1) existing laws and rules and regulations which bear on the item in dispute;
- (2) ability of the District to comply with the terms of the award;
- (3) the need to protect and maintain the public health, safety and welfare; and
- (4) the need to maintain personnel policies that are fair, reasonable and consistent with the objectives of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 1702, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.3. Standards of conduct for labor organizations.

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

(1) the maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of any person identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(4) fair elections; and

(5) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) The Board may accept any of the following as evidence that a labor organization's operations meet the requirements of subsection (a) of this section:

(1) a statement in writing that the labor organization is a member of the American Federation of Labor-Congress of Industrial Organizations and is governed by and subscribes to the American Federation of Labor-Congress of Industrial Organizations Codes of Ethical Practice;

(2) a copy of the labor organization's constitution and by-laws which contain explicit provisions covering these standards;

(3) a copy of rules and regulations of the organization which have been officially adopted by the membership, which contain explicit provisions covering these standards; or

(4) an official certification in writing from a labor organization stating that the labor organization subscribes to the Standards of Conduct for Labor Organizations, as set forth in this section.

(c) The Board shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with the Board. (Mar. 3, 1979, D.C. 2-139, § 1703, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.4. Unfair labor practices.

(a) The District, its agents and representatives are prohibited from:

(1) interfering, restraining or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) dominating, interfering or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter; or

- (5) refusing to bargain collectively in good faith with the exclusive representative.
- (b) Employees, labor organizations, their agents or representatives are prohibited from:
- (1) interfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;
 - (2) causing or attempting to cause the District to discriminate against an employee in violation of section 1-347.6;
 - (3) refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;
 - (4) engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and
 - (5) engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in section 1-347.6.
- (Mar. 3, 1979, D.C. Law 2-139, § 1704, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.5. Strikes prohibited.

It shall be unlawful for any District government employee or labor organization to participate in, authorize or ratify a strike against the District. (Mar. 3, 1979, D.C. Law 2-139, § 1705, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.6. Employee rights.

(a) All employees shall have the right: (1) To organize a labor organization free from interference, restraint or coercion; (2) to form, join or assist any labor organization or to refrain from such activity; and (3) to bargain collectively through representatives of their own choosing as provided in this subchapter.

(b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: Provided, however, that the exclusive representative is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the complaint. Any employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization. Adjustments of grievances must be consistent with the terms of the applicable collective bargaining agreement. Where the employee is not represented by the union with exclusive recognition for the unit, no adjustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances. (Mar. 3, 1979, D.C. Law 2-139, § 1706, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-347.2, 1-347.4.

§ 1-347.7. Union security; dues deduction.

Any labor organization which has been certified as the exclusive representative shall, upon request, have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues. Such authorization,

costs and termination shall be proper subjects of collective bargaining. Service fees may be deducted from an employee's salary by the employer if such a provision is contained in the bargaining agreement. (Mar. 3, 1979, D.C. Law 2-139, § 1707, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.8. Management rights; matters subject to collective bargaining.

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations: (1) To direct employees of the agencies; (2) to hire, promote, transfer, assign and retain employees in positions within the agency and to suspend, demote, discharge or take other disciplinary action against employees for cause; (3) to relieve employees of duties because of lack of work or other legitimate reasons; (4) to maintain the efficiency of the District government operations entrusted to them; (5) to determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work; or its internal security practices; and (6) to take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in section 1-347.16. (Mar. 3, 1979, D.C. Law 2-139, § 1708, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-338.1.

§ 1-347.9. Unit determination.

(a) The determination of an appropriate unit will be made on a case to case basis and will be made on the basis of a properly supported request from a labor organization. No particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as one factor in evaluating the community of interest of employees in a proposed unit.

(b) A unit shall not be established if it includes the following:

(1) any management official or supervisor: Except, that with respect to firefighters, a unit that includes both supervisors and non-supervisors may be considered: Provided, further, that supervisors employed by the District of Columbia Board of Education may form a unit which does not include non-supervisors;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this subchapter;

(5) both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit; or

(6) employees of the Council of the District of Columbia.

(c) Two (2) or more units for which the labor organization holds exclusive recognition within an agency may be consolidated into a single larger unit if the Board determines the larger unit to be appropriate. The Board shall certify the labor organization as the exclusive representative in the new unit when the unit is found appropriate. (Mar. 3, 1979, D.C. Law 2-139, § 1709, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-347.11.

§ 1-347.10. Selection of exclusive representatives; elections.

(a) Exclusive recognition shall be granted to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election, conducted by secret ballot, or by any other method in conformity with such rules and regulations as may be prescribed by the Board.

(b)(1) The employer may recognize, without an election, a labor organization as the exclusive representative for purpose of collective bargaining if an alternative method for determining majority status, such as a card check showing actual membership in the labor organization seeking recognition, has been approved by the Board.

(2) The Board shall issue rules and regulations which provide procedures for decertification of exclusive representatives upon the request of thirty percent (30%) of the employees or the District and the holding of an election. Such rules and regulations issued by the Board shall prescribe the criteria under which the District may request decertification such as lack of any unit activity over a period of time.

(c) Representation elections shall be conducted by an impartial body selected by the mutual agreement of the parties or, in the absence of a mutual agreement, by the Board. The entity conducting the election shall be subject to the provisions of this chapter, those rules and regulations as may be issued by the Board, or any election agreement as may be reached which is not inconsistent with this subchapter.

(d) The Board shall certify the results of each election within ten (10) working days after the final tally of votes, if:

(1) within the meaning of such rules and regulations as the Board may issue, no objection to the election is filed alleging that there has been conduct which affected the outcome of the election;

(2) the Board has determined that the number of challenged ballots is not sufficient to affect the outcome of the election.

(e) If the Board has reason to believe that such allegations or challenges may be valid, the Board shall hold a hearing on the matter within two (2) weeks after the date of receipt of the objection. The Board shall give due notice of the hearing to all parties. If the Board determines that the outcome of the election was affected, even by third party interference, or if the Board determines that the number of challenged ballots was sufficient to affect the outcome of the election, it shall require corrective action and may order a new election. If the Board determines that the alleged conduct did not affect the outcome of the election, it shall immediately certify the election results.

(f) A labor organization seeking exclusive recognition shall submit to the Board and the appropriate agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives. (Mar. 3, 1979, D.C. Law 2-139, § 1710, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-347.11.

§ 1-347.11. Rights accompanying exclusive recognition.

(a) The labor organization which has been certified to be the exclusive representative of all employees in the unit shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to membership in the labor organization: Provided, however, that the employee pays dues or service fees in an amount equal to the dues of the employees' organizations. Agency shop and other labor organization security provisions should be an appropriate issue for collective bargaining.

(b) Bargaining units established at the time this chapter becomes effective shall continue to be recognized as appropriate units subject to section 1-347.9 (c), and labor organizations which have exclusive recognition in bargaining units existing at the time this chapter becomes effective shall continue to enjoy exclusive recognition in these units subject to section 1-347.10 (b) (2). (Mar. 3, 1979, D.C. Law 2-139, § 1711, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.12. Sunshine provisions.

Collective bargaining sessions between the District and employee organization representatives shall not be open to the public. All fact finding proceedings under this subchapter shall be open to the public. (Mar. 3, 1979, D.C. Law 2-139, § 1712, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.13. Remedies, enforcement and judicial review.

(a) Remedies of the Board may include, but shall not be limited to, orders which: Withdraw or decertify recognition of a labor organization; direct a new representation election; recommend that disciplinary action be taken against an employee or group of employees by an appropriate agency head; reinstate, with or without back pay, or otherwise make whole, the employment or tenure of any employee, who the Board finds has suffered adverse economic effects in violation of this subchapter, though for adequate cause under the provisions of subchapter XVI of this chapter; compel bargaining in good faith; compel a labor organization or the District to desist from conduct prohibited under this subchapter; or direct compliance with the provisions of this subchapter.

(b) The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board.

(c) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within thirty (30) days after the final order has been issued. The Court shall have the same jurisdiction to review the Board's order and to grant to the Board such order of enforcement as in the case of a request by the Board under subsection (b) of this section.

(d) The Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine. (Mar. 3, 1979, D.C. Law 2-139, § 1713, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.14. Timeliness of decisions.

All decisions of the Board shall be rendered within a reasonable period of time, and in no event later than one hundred twenty (120) days after the matter is submitted or referred to it for a decision. (Mar. 3, 1979, D.C. Law 2-139, § 1714, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.15. Collective bargaining agreements.

(a) An agreement with a labor organization is subject to the approval of the Mayor or his or her designee, or in the case of employees of the District of Columbia Board of Education or the Board of Trustees of the University of the District of Columbia by the respective Boards. An agreement shall be approved within forty-five (45) days from the date of its execution by the parties, if it conforms to applicable law. If disapproved because certain provisions are asserted to be contrary to law, the agreement shall either be returned to the parties for renegotiation of the offensive provisions or such provisions shall be deleted from the agreement. An agreement which has not been approved or disapproved within the prescribed period of forty-five (45) days shall go into effect on the forty-sixth day and shall be binding on the parties.

(b) The Mayor and each appropriate personnel authority shall submit the collective bargaining agreement to the Council for its information. (Mar. 3, 1979, D.C. Law 2-139, § 1715, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-347.16. Collective bargaining concerning compensation.

(a) The Board shall provide for collective bargaining concerning compensation under the procedures of and on the dates provided in section 1-341.13. The Mayor, the District of Columbia Board of Education for its educational employees and the Board of Trustees of the University of the District of Columbia for its educational employees shall negotiate agreements regarding non-compensation issues at the same time as compensation issues.

(b) The provisions of this section shall become effective on January 1, 1980, and shall apply to all employees, including employees described in section 1-332.4, of a particular occupational group who are represented by a labor organization which has been granted exclusive recognition under this chapter by the Board. The determination of an appropriate unit for the purpose of negotiations concerning compensation shall not require a request from a labor organization. In determining appropriate bargaining units for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employer or employee groups as may be appropriate. (Mar. 3, 1979, D.C. Law 2-139, § 1716, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-332.6, 1-341.13, 1-347.8, 1-366.1.

Subchapter XVIII.—Employee Conduct

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-348.1. Standards of conduct.

(a) Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(b) The Mayor shall issue rules and regulations governing the ethical conduct of all District employees, after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia and recognized labor representatives of District employees, and shall require the submission by designated employees at a policy making, contract negotiating or purchasing level of reports of financial interest in matters which may create conflicts of interest. The Mayor shall provide for the annual auditing of all reports filed under the authority of this subsection. (Mar. 3, 1979, D.C. Law 2-139, § 1801, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-348.2. Conflicts of interest.

No employee of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflict or would appear to conflict with the fair, impartial and objective performance of officially assigned duties and responsibilities. (Mar. 3, 1979, D.C. Law 2-139, § 1802, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-348.3. Ethics counselors; codification of advisory opinions.

(a) Each agency head shall appoint an employee to serve as the ethics counselor for the agency. Employees so appointed shall be required to undertake and satisfactorily complete such training as is necessary in order to adequately discharge their duties. The training program required by this subsection shall be developed by the Mayor after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia and the District of Columbia Board of Elections and Ethics. The Mayor shall appoint an ethics counselor for the District of Columbia.

(b) Ethics counselors shall issue advisory opinions concerning potential conflicts of interest which are presented by employees of the agency for resolution. The ethics counselor shall issue an advisory opinion within fifteen (15) days of receipt of an inquiry from an employee.

(c) The opinions authorized pursuant to this section shall be considered advisory opinions authorized under subsection (c) of section 1-1156, and shall be published in the District of Columbia Register.

(d) All oral communications between employees of an agency and ethics counselors shall be privileged communications, and may not form the basis for any civil or criminal liability. Ethics counselors shall not disclose the nature or contents of such communications, except in accordance with the provisions of subsection (c) of this section.

(e) The Mayor, the Chairman and each Member of the Council, the President and each Member of the Board of Education, members of boards and commissions as provided in subsection (b) of section 1-1182, employees in the Executive Service and persons appointed under the authority of sections 1-339.1 through 1-339.3 or designated in section 1-339.8 shall not be included within the provisions of this subchapter for the purposes of enforcement. Enforcement of this subchapter and provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended (D.C. Code, sec. 1-1121 et seq.) for persons included in this section shall be enforced by the District of Columbia Board of Elections and Ethics as provided in the Act entitled “An Act To regulate the election of delegates representing the District of Columbia to national political conventions and for other purposes” (D.C. Code, sec. 1-1101 et seq.) and the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended (D.C. Code, sec. 1-1121 et seq.). (Mar. 3, 1979, D.C. Law 2-139, § 1803, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XIX.—Incentive Awards

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-349.1. Authority to grant awards.

(a) The Mayor and the District of Columbia Board of Education shall issue rules and regulations authorizing the granting of cash and honorary awards to employees for their suggestions, inventions, superior accomplishments, length of service and other meritorious

efforts which contribute to the efficiency, economy or otherwise improve the operation of the District government.

(b) The Mayor is authorized to make honorary awards to citizens who make significant contributions to the public good, or who submit ideas or inventions which materially benefit the District of Columbia. (Mar. 3, 1979, D.C. Law 2-139, § 1901, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-349.2.

§ 1-349.2. Limitation upon awards.

A cash award authorized under the provisions of subsection (a) of section 1-349.1 may not exceed five thousand dollars (\$5,000): Except, that in the case of suggestions or inventions resulting in a tangible monetary savings, awards should be based on a percentage formula of the estimated savings not to exceed twenty-five thousand dollars (\$25,000). (Mar. 3, 1979, D.C. Law 2-139, § 1902, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XX.—Safety and Health

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-350.1. Policy.

It shall be the policy of the District of Columbia government to establish and maintain a comprehensive occupational safety and health management program that ensures, to the maximum extent possible, a safe and healthful work environment for employees and general public users of District government facilities, and for the protection of District government property. (Mar. 3, 1979, D.C. Law 2-139, § 2001, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.2. Extent of title's coverage.

The occupational safety and health management program shall encompass all aspects of the total work environment throughout the District government, and shall include, but not be limited to: (1) Employee safety and health, inclusive of physical welfare at the work site and environmental control of occupational diseases; (2) fire safety; (3) motor vehicle safety; (4) safety of non-employee users of city facilities and services; (5) contractor safety; and (6) protection of District government property. (Mar. 3, 1979, D.C. Law 2-139, § 2002, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.3. Minimal standards applicable.

Safe and healthful conditions shall be provided all employees of the District government in accordance with applicable standards, codes, rules and regulations, and shall be consistent with the occupational safety and health standards promulgated by the United States Department of Labor under the provisions of the Occupational Safety and Health Act of 1970, as amended (84 Stat. 1590), and applicable codes, rules and regulations including, but not limited to: (1) The D.C. Minimum Wage and Industrial Safety Board Occupational Safety and Health Standards (11B D.C.R.R.); (2) the D.C. Building Code (D.C. Law 2-18); (3) the D.C. Electrical Code (D.C. Law 2-17); (4) the D.C. Fire Code (7 D.C.R.R.); and (5) the D.C. Plumbing Code (5C-2 D.C.R.R.). (Mar. 3, 1979, D.C. Law 2-139, § 2003, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.4. Authority.

The Mayor shall issue rules and regulations consistent with this subchapter and such laws of the federal government and the District of Columbia as they may, from time to time, be amended for the establishment, operation and administration of the District government's occupational safety and health management program. Programs and procedures developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations.

The Mayor shall ensure, through audits and inspections, compliance with this subchapter and the rules and regulations issued pursuant thereto, and shall direct that appropriate remedial or corrective action be taken when it is determined that noncompliance has occurred. (Mar. 3, 1979, D.C. Law 2-139, § 2004, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.5. Employee rights.

Employees shall be protected against penalty or reprisal for reporting an unsafe or unhealthful working condition or practice, or assisting in the investigation of such condition or practice. (Mar. 3, 1979, D.C. Law 2-139, § 2005, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.6. Training.

The Mayor shall provide for the establishment and supervision of programs, as may be necessary to comply with the provisions of this subchapter, for the education and training of employees in the recognition, avoidance and prevention of unsafe and unhealthful working conditions and practices. (Mar. 3, 1979, D.C. Law 2-139, § 2006, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.7. Health services.

The Mayor shall establish an employee health services program which shall provide for the following: (a) Treatment of on-the-job injuries and illness requiring emergency treatment; (b) pre-employment and other physical examinations, including fitness-for-duty examinations; (c) a counseling program for "troubled employees"; and (d) preventive programs relating to health. In developing and implementing a health services program consistent with the provisions of this subchapter, maximum use shall be made of existing District government medical and health services facilities, resources and expertise. (Mar. 3, 1979, D.C. Law 2-139, § 2007, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-350.8. Records.

Each agency shall keep adequate records of all occupational accidents and illnesses occurring within the agency for proper evaluation and necessary corrective action and make statistical or other reports as the Mayor may require by rules and regulations. (Mar. 3, 1979, D.C. Law 2-139, § 2008, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXI.—Health Benefits

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-351.1. Federal health benefits.

The health insurance benefit provisions of chapter 89 of Title 5 of the United States Code are applicable to all employees of the District government, except those specifically excluded by law or rule and regulation. Procedures established for administering the health benefits program with the District government shall be consistent with law and civil service rules. (Mar. 3, 1979, D.C. Law 2-139, § 2101, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXII.—Life Insurance; Benefit Program Study

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-352.1. Federal life insurance benefits.

The Life Insurance benefits provisions of chapter 87 of Title 5 of the United States Code shall apply to all employees of the District government, except those specifically excluded by law or rule and regulation. Procedures established for administering the life insurance benefits program within the District government shall be consistent with law and civil service rules. (Mar. 3, 1979, D.C. Law 2-139, § 2201, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-352.2. Benefit program study.

Within eighteen (18) months after the effective date of this chapter, the Mayor shall transmit a study to the Council concerning development of a program of disability income protection to be made available to employees through collective bargaining and a program of low cost legal services for employees. (Mar. 3, 1979, D.C. Law 2-139, § 2202, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXIII.—Disability Compensation

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-353.1. Definitions.

For the purpose of sections 1-353.1 through 1-353.45:

(a) The term “employee” means:

(1) a civil officer or employee in any branch of the District of Columbia government, including an officer or employee of an instrumentality wholly owned by the District of Columbia government;

(2) an individual rendering personal service to the District of Columbia government similar to the service of a civil officer or employee of the District of Columbia, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual, but does not include a member of the Metropolitan Police Department or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 4-521 through 4-535; and

(3) an individual selected pursuant to chapter 121 of Title 28 of the United States Code and serving as a petit or grand juror and who is otherwise an employee for the purposes of this subchapter as defined by paragraphs (1) and (2) of this subsection;

(b) The term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to rules and regulations issued by the Mayor;

(c) The term “medical, surgical, and hospital services and supplies” includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by District or state law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine, to correct a subluxation as demonstrated by x-ray to exist, and subject to rules and regulations issued by the Mayor;

(d) The term “monthly pay” means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs if the recurrence begins more than six (6) months after the injured employee resumes regular full-time employment with the District, whichever is greater, except when otherwise determined under section 1-353.13 with respect to any period;

(e) The term “injury” includes, in addition to injury by accident, a disease proximately caused by the employment and damage to or destruction of medical braces, artificial limbs and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired: Except, that eyeglasses and hearing aids would not be replaced, repaired or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services;

(f) The term “widow” means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(g) The term “parent” includes stepparents and parents by adoption;

(h) The terms “brother” and “sister” mean one who at the time of the death of the employee is under eighteen (18) years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters and brothers and sisters by adoption, but does not include married brothers or married sisters;

(i) The term “child” means one who at the time of the death of the employee is under eighteen (18) years of age or over that age and incapable of self-support, and includes stepchildren, adopted children and posthumous children, but does not include married children;

(j) The term “grandchild” means one who at the time of the death of the employee is under eighteen (18) years of age or over that age and incapable of self-support;

(k) The term “widower” means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion;

(l) The term “compensation” includes the money allowance payable to an employee or his or her dependents and any other benefits paid for from the Employees’ Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(m) The term “student” means an individual under twenty-three (23) years of age who has not completed four (4) years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) a school, college or university operated or directly supported by the United States, by the District, by a state or local government or political subdivision thereof;

(2) a school, college or university which has been accredited by the District, by a state, by a state-recognized or nationally-recognized accrediting agency or body;

(3) a school, college or university not so accredited but whose credits are accepted on transfer, by at least three (3) institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) an additional type of educational or training institution as defined by the Mayor. Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four (4) months and if he or she shows, to the satisfaction of the Mayor, that he or she has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Mayor, he or she is prevented by factors beyond his or her control from pursuing his or her education. A student whose twenty-third (23rd) birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(n) The term "price index" means the Consumer Price Index (all items — United States city average) published monthly by the Bureau of Labor Statistics;

(o) The term "base month" means the month of July 1966 and each later month which is used as a basis for calculating an increase under section 1-353.41; and

(p) The term "organ" means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart and back.

(Mar. 3, 1979, D.C. Law 2-139, § 2301, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.10, 1-353.18, 1-353.33.

§ 1-353.2. Compensation for disability or death of employee.

The District of Columbia government shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty, unless the injury or death is:

(1) caused by willful misconduct of the employee;

(2) caused by the employee's intention to bring about the injury or death of himself or herself or of another; or

(3) proximately caused by the intoxication of the injured employee.

(Mar. 3, 1979, D.C. Law 2-139, § 2302, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.3. Medical services and initial medical and other benefits.

(a) The District government shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Mayor considers likely to cure, give relief, reduce the degree or period of disability or aid in lessening the amount of the monthly compensation. These services, appliances and supplies shall be furnished:

(1) whether or not disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of Title 5 of the United States Code, or another retirement system for employees of the District or federal government; and

(3) by or on the order of District of Columbia government medical officers and hospitals, or, at the employee's option, by or on order of physicians and hospitals designated or approved by the Mayor.

The employee may initially select a physician to provide medical services, appliances, supplies in accordance with such rules and regulations and instructions as the Mayor considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies. These expenses, when authorized or approved by the Mayor, shall be paid from the Employees' Compensation Fund.

(b) The Mayor, under such limitations or conditions as he or she considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other

benefits under this section. The Mayor may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury accepted by the employing agency as properly compensable under this subchapter. The Mayor shall prescribe the form and content of the certificate. (Mar. 3, 1979, D.C. Law 2-139, § 2303, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.17.

§ 1-353.4. Vocational rehabilitation.

(a) The Mayor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Mayor shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Mayor, insofar as practicable, shall use the services or facilities of the District of Columbia government. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund.

(b) Notwithstanding section 1-353.6, individuals directed to undergo vocational rehabilitation by the Mayor, while undergoing such rehabilitation, shall receive compensation at the rate provided in sections 1-353.5 and 1-353.10, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation. (Mar. 3, 1979, D.C. Law 2-139, § 2304, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.11, 1-353.13, 1-353.17.

§ 1-353.5. Total disability.

(a) If the disability is total, the District of Columbia government shall pay the employee during the disability monthly monetary compensation equal to sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of his or her monthly pay, which shall be known as his or her basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs or the loss of sight of both eyes is prima facie permanent total disability. (Mar. 3, 1979, D.C. Law 2-139, § 2305, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.4, 1-353.7, 1-353.10.

§ 1-353.6. Partial disability.

(a) If the disability is partial, the District of Columbia government shall pay the employee during the disability monthly monetary compensation equal to sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the difference between his or her monthly pay and his or her monthly wage-earning capacity after the beginning of the partial disability. This shall be known as his or her basic compensation for partial disability.

(b) The Mayor may require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Mayor specifies. The employee shall include in the affidavit or report the value of housing, board, lodging and other advantages which are part of his or her earnings in employment or self-employment and which can be estimated in money. An employee who does the following:

- (1) fails to make an affidavit or report when required; or
- (2) knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.

Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 1-353.29, unless recovery is waived under that section.

(c) A partially disabled employee who does the following:

- (1) refuses to seek suitable work;
- (2) refuses to undergo suitable vocational rehabilitation; or
- (3) refuses or neglects to work after suitable work is offered to, procured by or secured for him or her, is not entitled to compensation and such payment shall be suspended.

(Mar. 3, 1979, D.C. Law 2-139, § 2306, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel

Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.4, 1-353.7, 1-353.10.

§ 1-353.7. Compensation schedule.

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of his or her monthly pay. The basic compensation shall be:

(1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) payable regardless of whether the disability also involves another impairment of the body; and

(3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by the following:

(1) section 1-353.5, if the disability is total; or

(2) section 1-353.6, if the disability is partial.

(c) The compensation schedule is as follows:

(1) arm lost, three hundred twelve (312) weeks' compensation;

(2) leg lost, two hundred eighty-eight (288) weeks' compensation;

(3) hand lost, two hundred forty-four (244) weeks' compensation;

(4) foot lost, two hundred five (205) weeks' compensation;

(5) eye lost, one hundred six (106) weeks' compensation;

(6) thumb lost, seventy-five (75) weeks' compensation;

(7) first finger lost, forty-six (46) weeks' compensation;

(8) great toe lost, thirty-eight (38) weeks' compensation;

(9) second finger lost, thirty (30) weeks' compensation;

(10) third finger lost, twenty-five (25) weeks' compensation;

(11) toe other than great toe lost, sixteen (16) weeks' compensation;

(12) fourth finger lost, fifteen (15) weeks' compensation;

(13) loss of hearing:

(A) complete loss of hearing of one ear, fifty-two (52) weeks' compensation; or

(B) complete loss of hearing of both ears, two hundred (200) weeks' compensation;

(14) compensation for loss of binocular vision or for loss of eighty percent (80%) or more of the vision of any eye is the same as for loss of the eye;

(15) compensation for loss of more than one (1) phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half ($\frac{1}{2}$) of the compensation for loss of the entire digit;

(16) if, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively;

(17) compensation for loss of use of two (2) or more digits or one (1) or more phalanges of each of two (2) or more digits of a hand or foot, is proportioned to the loss of the use of the hand or foot occasioned thereby;

(18) compensation for permanent total loss of use of a member is the same as for loss of the member;

(19) compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction;

(20) in case of loss of use of more than one (1) member or parts of more than one (1) member as enumerated by this schedule, the compensation is for loss of the use of each member or part thereof and the awards run consecutively. When the injury affects only two (2) or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears;

(21) for serious disfigurement of the face, head or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed three thousand five hundred dollars (\$3,500) shall be awarded in addition to any other compensation payable under this schedule;

(22) for permanent loss or loss of use of any other important external or internal organ of the body, as determined by the Mayor, proper and equitable compensation not to exceed three hundred twelve (312) weeks for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

(Mar. 3, 1979, D.C. Law 2-139, § 2307, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of paragraph (5) of subsection (c), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive

Merit Personnel Act Disability Compensation and Personnel Management Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.8, 1-353.9, 1-353.10, 1-353.15, 1-353.16.

§ 1-353.8. Reduction of compensation for subsequent injury to same member.

The period of compensation payable under the schedule in section 1-353.7 is reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

(2) the Mayor finds that compensation payable for the later disability, in whole or in part, would duplicate the compensation payable for the preexisting disability.

In such a case, compensation for disability continuing after the scheduled period starts on the expiration of that period as reduced under this section. (Mar. 3, 1979, D.C. Law 2-139, § 2308, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.9. Beneficiaries of awards unpaid at death; order of precedence.

(a) If an individual:

(1) has sustained disability compensable under section 1-353.7 (a);

(2) has filed a valid claim in his or her lifetime; and

(3) dies from a cause other than the injury before the end of the period specified by the schedule;

the compensation specified by the schedule that is unpaid at his or her death, whether or not accrued or due at his or her death, shall be paid:

(A) under an award made before or after the death;

(B) for the period specified by the schedule;

(C) to and for the benefit of the persons then in being within the classes and on the conditions and in proportions specified by this section; and

(D) in the following order of precedence:

(i) if there is no child, to the widow or widower.

(ii) if there are both a widow or widower and a child or children, one-half ($\frac{1}{2}$) to the widow or widower and one-half ($\frac{1}{2}$) to the child or children.

(iii) if there is no widow or widower, to the child or children.

(iv) if there is no survivor in the above classes, to the parent or parents completely or partially dependent for support on the decedent, or to other completely dependent relatives listed by section 1-353.33, or to both in proportions provided by rules and regulations.

(v) if there is no survivor in the above classes and no burial allowance is payable under section 1-353.34, an amount not exceeding that which would be expendable under section 1-353.34, if applicable, shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he or she has paid the burial expenses: Except, that a compensated insurer or other person obligated by law or contract to pay the burial expenses or a state or political subdivision or entity is deemed not equitably entitled to such reimbursal.

(b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 1-353.7 even if at the time of death the individual was entitled to the augmented rate specified by section 1-353.10.

(c) A surviving beneficiary under subsection (a) of this section, except one under clause (v) of subparagraph (D) of paragraph (3) of subsection (a) of this section, does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under clause (v) of subparagraph (D) of paragraph (3) of subsection (a) of this section, ceases to be entitled to payment on the happening of an event which would terminate his or her right to compensation for death under section 1-353.33. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section. (Mar. 3, 1979, D.C. Law 2-139, § 2309, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.15.

§ 1-353.10. Augmented compensation for dependents.

(a) For the purpose of this section, “dependent” means the following:

(1) a spouse, if:

(A) he or she is a member of the same household as the employee; or

(B) he or she is receiving regular contributions from the employee for his or her support;

or

(C) the employee has been ordered by a court to contribute to his or her support;

(2) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his or her support, and who is:

(A) under eighteen (18) years of age; or

(B) over eighteen (18) years of age and incapable of self-support because of physical or mental disability; and

(3) a parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached eighteen (18) years of age shall continue if he or she is a student as defined by section 1-353.1 at the time he or she reaches eighteen (18) years of age for so long as he or she continues to be such a student or until he or she marries.

(b) A disabled employee with one (1) or more dependents is entitled to have his or her basic compensation for disability augmented:

(1) at the rate of eight and one-third percent ($8\frac{1}{3}\%$) of his or her monthly pay if that compensation is payable under section 1-353.5 or 1-353.7 (a); or

(2) at the rate of eight and one-third percent ($8\frac{1}{2}\%$) of the difference between his or her monthly pay and his or her monthly wage-earning capacity if that compensation is payable under section 1-353.6.

(Mar. 3, 1979, D.C. Law 2-139, § 2310, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.4, 1-353.9, 1-353.12.

§ 1-353.11. Additional compensation for services of attendants or vocational rehabilitation.

(a) The Mayor may pay an employee who has been awarded compensation an additional sum of not more than five hundred dollars (\$500) a month, as he or she considers necessary, when he or she finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet or is paralyzed and unable to walk or because of another disability resulting from the injury making him or her so helpless as to require constant attendance.

(b) The Mayor may pay an individual undergoing vocational rehabilitation under section 1-353.4 additional compensation necessary for his or her maintenance, but not to exceed two hundred dollars (\$200) a month. (Mar. 3, 1979, D.C. Law 2-139, § 2311, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.12.

§ 1-353.12. Maximum and minimum monthly payments.

Except as provided by section 1-353.38, the monthly rate of compensation for disability, including augmented compensation under section 1-353.10, but not including additional compensation under section 1-353.11, may not be more than seventy-five percent (75%) of the monthly pay of the maximum rate of basic pay for GS-15 as provided in section 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter. In case of total disability the monthly rate of compensation may not be less than seventy-five percent (75%) of the monthly pay of the minimum rate of basic pay for GS-2 as provided in section 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter, or the amount of the monthly pay of the employee, whichever is less. (Mar. 3, 1979, D.C. Law 2-139, § 2312, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.38.

§ 1-353.13. Increase or decrease of basic compensation.

(a) If an individual:

(1) was a minor or employed in a learner's capacity at the time of injury; or

(2) was not physically or mentally handicapped before the injury, the Mayor, on review under section 1-353.28 after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an individual, without good cause, fails to apply for and undergo vocational rehabilitation when so directed under section 1-353.4, the Mayor may suspend the monetary compensation of the individual until the individual, in good faith, complies with the directions of the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 2313, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel

Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.1.

§ 1-353.14. Computation of pay.

(a) For the purpose of this section:

(1) The term “overtime pay” means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of worktime, as observed by the employing establishment; and

(2) The term “year” means a period of twelve (12) calendar months, or the equivalent thereof as specified by rules and regulations prescribed by the Mayor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth ($1/12$) of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second ($1/52$) of the average annual earning. For so much of a period of total disability as does not exceed ninety (90) calendar days from the date of the beginning of compensable disability, the compensation, at the discretion of the Mayor, may be computed on the basis of the actual daily wage of the employee at the time of injury, in which event he or she may receive compensation for the days he or she would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay:

(A) was fixed, the average annual earnings are the annual rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his or her daily wage for the particular employment or the average thereof, if the daily wage has fluctuated; by three hundred (300), if he or she was employed on the basis of a six (6) day workweek; two hundred eighty (280), if employed on the basis of a five and one-half ($5\frac{1}{2}$) day workweek; and two hundred sixty (260), if employed on the basis of a five (5) day workweek.

(2) If the employee did not work in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment with the District government, as determined under paragraph (1) of this subsection.

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he or she was working at the time of the injury having regard to the previous earnings of the employee in District of Columbia government employment, and of other employees of the District of Columbia government in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee or other relevant factors. The average annual earnings may not be less than one hundred fifty (150) times the average daily wage the employee earned in the employment during the days employed within one (1) year immediately preceding his or her injury.

(4) If the employee served without pay or a nominal pay, paragraphs (1), (2) and (3) of this subsection apply, as far as practicable, but the average earnings of the employee may not exceed the minimum rate of basic pay for GS-15 as provided in section 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter. If the average annual

earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of three thousand six hundred dollars (\$3,600) a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money and premium pay under section 5545 (c) (1) of Title 5 of the United States Code, are included as part of the pay, but account is not taken of the following:

- (1) overtime pay;
 - (2) additional pay or allowance authorized outside the District of Columbia government because of differential in cost of living or other special circumstances; or
 - (3) bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service.
- (Mar. 3, 1979, D.C. Law 2-139, § 2314, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.15, 1-353.33.

§ 1-353.15. Determination of wage-earning capacity.

(a) In determining compensation for partial disability, except permanent partial disability compensable under sections 1-353.7 and 1-353.9, the wage-earning capacity of an employee is determined by his or her actual earnings, if his or her actual earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his or her wage-earning capacity or if the employee has no actual earnings, his or her wage-earning capacity as appears reasonable under the circumstances is determined with due regard to the following:

- (1) the nature of his or her injury;
- (2) the degree of physical impairment;
- (3) his or her usual employment;
- (4) his or her age;
- (5) his or her qualifications for other employment;
- (6) the availability of suitable employment; and
- (7) other factors or circumstances which may affect his or her wage-earning capacity in his or her disabled condition.

(b) Section 1-353.14 is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability. (Mar. 3, 1979, D.C. Law 2-139, § 2315, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.16. Limitation of right to receive compensation.

(a) While an employee is receiving compensation under this subchapter or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he or she may not receive salary, pay or remuneration of any type from the District of Columbia, except:

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the Veterans Administration unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532 of Title 5 of the United States Code. Eligibility for or receipt of benefits under subchapter II of chapter 83 of Title 5 of the United States Code or another retirement or disability system for employees of the government does not impair the right of the employee to compensation for scheduled disabilities specified by subsection (c) of section 1-353.7.

(b) An individual entitled to benefits under this subchapter because of his or her injury, or because of the death of an employee who also is entitled to receive from the District of Columbia government under a provision of a statute, other than this subchapter, payment or benefits for that injury or death (except proceeds of an insurance policy purchased entirely by employee contributions), because of service by him or her (or in the case of death, by the deceased) as an employee or in the Armed Forces, shall elect which benefits he or she will receive. The individual shall make the election within one (1) year after the injury or death or within a further time allowed for good cause by the Mayor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the District of Columbia government or an instrumentality thereof, under this subchapter or any extension thereof with respect to the injury or death of an employee, is exclusive and instead of all other liability of the District of Columbia government or the instrumentality to the employee, his or her legal representative, spouse, dependents, next of kin and any other person otherwise entitled to recover damages from the District of Columbia or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute. This subchapter does not apply to a master or a member of a crew of a vessel. (Mar. 3, 1979, D.C. Law 2-139, § 2316, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District

of Columbia Government Comprehensive Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.17. Time of accrual of right.

(a) An employee is not entitled to compensation or continuation of pay as provided in section 1-353.18 for the first two (2) days of temporary disability which would have otherwise been workdays for the employee, except:

- (1) when the disability exceeds fourteen (14) calendar days;
- (2) when the disability is followed by permanent disability; or
- (3) as provided by sections 1-353.3 and 1-353.4.

(b) An employee may use annual or sick leave to his or her credit at the time the disability begins but the time period specified in subsection (a) of this section does not begin to run until the use of annual or sick leave ends. (Mar. 3, 1979, D.C. Law 2-139, § 2317, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of subsection (a), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District

of Columbia Government Comprehensive Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.18. Continuation of pay; election to use annual or sick leave.

(a) The District of Columbia government shall authorize the continuation of pay of an employee, as defined in subsection (a) of section 1-353.1 (other than those referred to in subsection (b) of that section), who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Mayor within the time specified in paragraph (2) of subsection (a) of section 1-353.22.

(b) Continuation of pay under this subchapter shall be furnished:

- (1) unless controverted under rules and regulations of the Mayor;
- (2) for a period not to exceed forty-five (45) days; and
- (3) under accounting procedures and such other rules and regulations as the Mayor may require.

(c) If a claim under subsection (a) of this section is denied by the Mayor, payments under this section, at the option of the employee, shall be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of Title 5 of the United States Code or equivalent provisions of this chapter.

(d) Payments under this section shall not be considered compensation as defined by subsection (l) of section 1-353.1. (Mar. 3, 1979, D.C. Law 2-139, § 2318, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.17.

§ 1-353.19. Notice of injury or death.

An employee injured in the performance of his or her duty, or someone on his or her behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 1-353.33, or someone on his or her behalf.

A notice of injury or death shall:

- (a) be given within thirty (30) days after the injury or death;
 - (b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
 - (c) be in writing;
 - (d) state the name and address of the employee;
 - (e) state the year, month, day, hour when and the particular locality where the injury or death occurred;
 - (f) state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause;
 - (g) be signed by and contain the address of the individual giving the notice; and
 - (h) be accompanied by a form approved by the Mayor authorizing access to all related medical and earnings data concerning the claimant.
- (Mar. 3, 1979, D.C. Law 2-139, § 2319, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.22.

§ 1-353.20. Report of injury.

Immediately after an injury to an employee which results in his or her death or probable disability, his or her immediate superior shall report to the Mayor. The Mayor may:

- (a) prescribe the information that the report shall contain;
 - (b) require the immediate superior to make supplemental reports; and
 - (c) obtain such additional reports and information from employees as are agreed on by the Mayor and the head of the employing agency.
- (Mar. 3, 1979, D.C. Law 2-139, § 2320, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.21. Claim.

Compensation under this subchapter may be allowed only if an individual or someone on his or her behalf makes claim therefor. The claim shall:

- (a) be made in writing within the time specified by section 1-353.22;
- (b) be delivered to the office of the Mayor or to an individual whom the Mayor may designate by rules and regulations, or deposited in the mail properly stamped and addressed to the Mayor or his or her designee;
- (c) be on a form approved by the Mayor;

- (d) contain all information required by the Mayor;
 - (e) be sworn to by the individual entitled to compensation or someone on his or her behalf; and
 - (f) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability. The Mayor may waive subsections (c) through (f) of this section for reasonable cause shown.
- (Mar. 3, 1979, D.C. Law 2-139, § 2321, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.22. Time for making claim.

(a) An original claim for compensation for disability or death must be filed within three (3) years after the injury or death. Compensation for disability or death, including medical care in a disability case, may not be allowed if claim is not filed within that time unless:

(1) the immediate superior has actual knowledge of the injury or death within thirty (30) days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or

(2) written notice of injury or death as specified in section 1-353.19 was given within thirty (30) days.

(b) In a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his or her employment. In such a case, the time for giving notice of injury begins to run when the employee is aware or, by the exercise of reasonable diligence, should have been aware that his or her condition is causally related to his or her employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not:

(1) begin to run against a minor until he or she reaches eighteen (18) years of age or has had a legal representative appointed; or

(2) run against an incompetent individual while he or she is incompetent and has no duly appointed legal representative; or

(3) run against any individual whose failure to comply is excused by the Mayor on the ground that such notice could not be given because of exceptional circumstances.

(Mar. 3, 1979, D.C. Law 2-139, § 2322, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of paragraph (1) of subsection (d), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive

Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.18, 1-353.21.

§ 1-353.23. Physical examinations.

(a) An employee shall submit to examination by a medical officer of the District of Columbia government or by a physician, designated or approved by the Mayor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him or her present to participate in the examination. If there is disagreement between the physician making the examination for the District of Columbia government and the physician of the employee, the Mayor shall appoint a third physician who shall make an examination.

(b) An employee is entitled to be paid expenses incident to an examination required by the Mayor which, in the opinion of the Mayor, are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(c) The Mayor shall fix the fees for examinations under this section by physicians not employed by or under contract to the District of Columbia government to furnish medical services to employees. The fees, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his or her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee. (Mar. 3, 1979, D.C. Law 2-139, § 2323, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.24. Findings and awards; hearings.

(a) The Mayor shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after the following:

(1) considering the claim presented by the beneficiary and the report furnished by the immediate superior; and

(2) completing such investigation as the Mayor considers necessary.

(b) (1) Before review under subsection (a) of section 1-353.28, a claimant for compensation not satisfied with a decision of the Mayor under subsection (a) of this section is entitled, on request made within thirty (30) days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Mayor. At the hearing, the claimant is entitled to present evidence in further support of his or her claim. Within thirty (30) days after the hearing ends, the Mayor shall notify the claimant in writing of his or her further decision and any modifications of the award he or she may make and of the basis of his or her decision.

(2) In conducting the hearing, the representative of the Mayor is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he or she shall receive such relevant evidence as the claimant adduces and such other evidence as he or she determines necessary of useful in evaluating the claim.

(Mar. 3, 1979, D.C. Law 2-139, § 2324, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of paragraph (2) of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive

Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.44.

§ 1-353.25. Misbehavior at proceedings.

If an individual does the following:

(1) disobeys or resists a lawful order or process in proceedings under this subchapter before the Mayor or his or her representative; or

(2) misbehaves during a hearing or so near the place of hearing as to obstruct it, the Mayor or his or her representative shall certify the facts to the Superior Court of the District of Columbia. The Court, in a summary manner, shall hear the evidence as to the acts complained of and, if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the Court, or commit the individual on the same conditions

as if the forbidden act has occurred with reference to the process of or in the presence of the Court.

(Mar. 3, 1979, D.C. Law 2-139, § 2325, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.26. Subpoenas; oaths; examination of witnesses.

The Mayor, on any matter within his or her jurisdiction under this subchapter, shall have the authority to:

(1) issue subpoenas for and compel the attendance of witnesses within a radius of one hundred (100) miles of the District of Columbia;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers, documents and other evidence.

(Mar. 3, 1979, D.C. Law 2-139, § 2326, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.27. Representation; attorneys; fees.

(a) A claimant may authorize an individual to represent him or her in any proceeding under this subchapter before the Mayor.

(b) A claim for legal or other services furnished in respect to a case, claim or award for compensation under this subchapter is valid only if approved by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 2327, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.28. Review of award.

(a) The Mayor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Mayor, in accordance with the facts found on review, may:

(1) end, decrease or increase the compensation previously awarded; or

(2) award compensation previously refused or discontinued.

(b) The action of the Mayor or his or her designee in allowing or denying a payment under this subchapter may be reviewed by the Superior Court of the District of Columbia. Such decision of the Mayor may be affirmed, modified, revised or remanded in the discretion of the Court. The decision of the Mayor shall be affirmed if supported by substantial competent evidence on the record. Credit shall be allowed in the accounts of a certifying or disbursing official for payment in accordance with that action. (Mar. 3, 1979, D.C. Law 2-139, § 2328, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of subsection (b), see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel

Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-353.13, 1-353.24.

§ 1-353.29. Recovery of overpayments.

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under rules and regulations prescribed by the Mayor by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the District of Columbia government may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when:

- (1) adjustment or recovery of the amount is waived under subsection (b) of this section; or
- (2) adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Mar. 3, 1979, D.C. Law 2-139, § 2329, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.30. Assignment of claim.

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors. (Mar. 3, 1979, D.C. Law 2-139, § 2330, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.31. Subrogation of the District of Columbia.

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the District of Columbia government to pay damages, the Mayor may require the beneficiary to do the following:

- (1) assign to the District of Columbia government any right of action he or she may have to enforce the liability or any right he or she may have to share in money or other property received in satisfaction of that liability; or
- (2) prosecute the action in his or her own name.

An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his or her own name when required by the Mayor is not entitled to compensation under this subchapter.

(c) The Mayor may prosecute or compromise a cause of action assigned to the District of Columbia government. When the Mayor realizes on the cause of action, he or she shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payment of compensation payable for the same injury. The beneficiary is entitled to not less than one-fifth ($\frac{1}{5}$) of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted. (Mar. 3, 1979, D.C. Law 2-139, § 2331, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.42.

§ 1-353.32. Adjustment after recovery from a third person.

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the District of Columbia government to pay damages, and a beneficiary entitled to compensation from the District of Columbia government for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or her in his or her behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the District of Columbia government and credit any surplus on future payments of compensation payable to him or her for the same injury. No court, insurer, attorney or other person shall pay

or distribute to the beneficiary or his or her designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the District of Columbia government. The amount refunded to the District of Columbia government shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he or she shall credit the money or property on compensation payable to him or her by the District of Columbia government for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth ($\frac{1}{5}$) of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the District of Columbia government. (Mar. 3, 1979, D.C. Law 2-139, § 2332, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.42.

§ 1-353.33. Compensation in case of death.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) to the widow or widower, if there is no child, fifty (50) percent;
- (2) to the widow or widower, if there is a child, forty-five (45) percent and in addition fifteen (15) percent for each child not to exceed a total of seventy-five (75) percent for the widow or widower and children;
- (3) to the children, if there is no widow or widower, forty (40) percent for one (1) child and fifteen (15) percent additional for each additional child not to exceed a total of seventy-five (75) percent, divided among the children share and share alike;
- (4) to the parents, if there is no widow, widower, or child, as follows:
 - (A) twenty (20) percent, if one (1) parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;
 - (B) twenty (20) percent to each, if both were wholly dependent; or
 - (C) a proportionate amount in the discretion of the Mayor if one (1) or both were partly dependent. If there is a widow, widower or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower and children, will not exceed a total of seventy-five (75) percent;
- (5) to the brothers, sisters, grandparents and grandchildren, if there is no widow, widower, child or dependent parent as follows:
 - (A) twenty (20) percent, if one (1) was wholly dependent on the employee at the time of death;
 - (B) thirty (30) percent, if more than one (1) was wholly dependent, divided among the dependents share and share alike; or
 - (C) ten (10) percent, if no one is wholly dependent but one (1) or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children and dependent parents, will not exceed a total of seventy-five (75) percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until:

- (1) a widow or widower dies or remarries before reaching age sixty (60);
- (2) a child, brother, sister or grandchild dies, marries or becomes eighteen (18) years of age or, if over age eighteen (18) and incapable of self-support, becomes capable of self-support; or
- (3) a parent or grandparent dies, marries or ceases to be dependent.

Notwithstanding the provisions of paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister or grandchild that would otherwise and because the child,

brother or sister or grandchild has reached eighteen (18) years of age shall continue if he or she is a student as defined by section 1-353.1 at the time he or she reaches eighteen (18) years of age for so long as he or she continues to be such a student or until he or she marries. A widow or widower who is entitled to benefits under this subchapter derived from more than one (1) husband or wife shall elect one (1) entitlement to be utilized.

(c) On the cessation of compensation under this section to or on the account of an individual, the compensation of the remaining individuals, entitled to compensation or the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two (2) or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Mayor may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2 as provided in section 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter. The total monthly compensation may not exceed:

(1) the monthly pay computed under section 1-353.14, except for increases authorized by section 1-353.41; or

(2) seventy-five (75) percent of the maximum monthly rate of basic pay for GS-15 as provided in section 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter.

(f) Notwithstanding any funeral and burial expenses paid under section 1-353.34, there shall be paid a sum of two hundred dollars (\$200) to the personal representative of a deceased employee within the meaning of paragraph (1) of subsection (a) of section 1-353.1 for reimbursement of the costs of termination of the decedent's status as an employee of the District of Columbia government. (Mar. 3, 1979, D.C. Law 2-139, § 2333, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.9, 1-353.19, 1-353.35, 1-353.38.

§ 1-353.34. Funeral expenses; transportation of body.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed eight hundred dollars (\$800), at the discretion of the Mayor.

(b) The body of an employee whose home was in the United States, at the discretion of the Mayor, may be embalmed and transported in a hermetically sealed casket to his or her home or last place of residence at the expense of the Employees' Compensation Fund if:

(1) the employee dies from:

(A) the injury while away from his or her home or official station or outside the United States; or

(B) from other causes while away from his or her home or official station for the purposes of receiving medical or other services, appliances, supplies or examination under this subchapter; and

(2) the relatives of the employee request the return of the body.

If the relatives do not request the return of the body of the employee, the Mayor may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral and burial expenses. (Mar. 3, 1979, D.C. Law 2-139, § 2334, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.9, 1-353.33.

§ 1-353.35. Lump-sum payment.

(a) The liability of the District of Columbia government for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at four (4) percent true discount compounded annually if:

- (1) the monthly payment to the beneficiary is less than fifty dollars (\$50) a month;
- (2) the beneficiary is or is about to become a nonresident of the United States; or
- (3) the Mayor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current available United States Life Tables, as developed by the United States Department of Health, Education and Welfare, but the lump-sum payment to a widow or widower of the deceased employee may not exceed sixty (60) months' compensation. The probability of the occurrence of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage before reaching age sixty (60), a widow or widower entitled to compensation under section 1-353.33, shall be paid a lump sum equal to twenty-four (24) times the monthly compensation payment (excluding compensation on account of another individual) to which he or she was entitled immediately before the remarriage. (Mar. 3, 1979, D.C. Law 2-139, § 2335, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.37.

§ 1-353.36. Initial payments outside the United States.

If an employee is injured outside the continental United States, the Mayor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the District of Columbia government designated by the Mayor for that purpose in the locality in which the employee was employed or the injury incurred. (Mar. 3, 1979, D.C. Law 2-139, § 2336, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.37. Compensation for noncitizens and nonresidents.

(a) When the Mayor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he or she may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by:

(1) the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation or custom applicable in cases of personal injury or death; or

(2) establishing special schedules of compensation for injury, death and loss of use of members and functions of the body for specific classes of employees, areas and place irrespective of the basis adopted, the Mayor may at any time:

(A) modify or limit the maximum monthly and total aggregate payments for injury, death and medical or other benefits;

(B) modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Mayor or his or her designee may:

(1) make a lump-sum award in the manner prescribed by section 1-353.35 when he or she, or his or her designee, considers it to be for the best interest of the District of Columbia government; and

(2) compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law. Compensation paid under this subsection is instead of all other compensation from the District of Columbia government for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and satisfaction of all liability of the District of Columbia government in respect to the particular injury or death.

(c) The Mayor may delegate to an employee or agency of the District of Columbia government, with such limitations and right of review as he or she considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such rules and regulations and instructions as the Mayor considers necessary. For this purpose, the Mayor may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Mayor may waive the application of this subchapter in whole or in part and for such period or periods as he or she may fix if the Mayor finds that:

(1) conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) claimants under this section are alien enemies.

(e) The Mayor may apply this section retrospectively with adjustment of compensation and benefits as he or she considers necessary and proper. (Mar. 3, 1979, D.C. Law 2-139, § 2337, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.38. Minimum limit modification for noncitizens and aliens.

The minimum limit on monthly compensation for disability under section 1-353.12 and the minimum limit on monthly pay on which death compensation is computed under section 1-353.33 do not apply in the case of a noncitizen employee, or a class or classes of noncitizen employees, who sustain injury outside the continental United States. The Mayor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees. (Mar. 3, 1979, D.C. Law 2-139, § 2338, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-353.12.

§ 1-353.39. Student-employees.

A student-employee, as defined by section 5351 of Title 5 of the United States Code, who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty. (Mar. 3, 1979, D.C. Law 2-139, § 2339, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.40. Administration.

The Mayor shall administer, and decide all questions arising under, this subchapter. He or she may:

(1) appoint employees to administer this subchapter; and

(2) delegate to the Director of the Office of Personnel any of the powers conferred on him or her by this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2340, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.41. Cost-of-living adjustment of compensation.

(a) Each month the Mayor shall determine the percent change in the price index. Effective the first day of the month, which begins after the price index change equals a rise of at least three (3) percent for three (3) consecutive months over the price index for the latest base month, compensation payable on account of disability or death which occurred more than (1) year before the first day shall be increased by the percent rise in the price index (calculated on the highest level of the price index during the three (3) consecutive months) adjusted to the nearest one-tenth ($\frac{1}{10}$) of one (1) percent. For the purpose of this subsection, the item "price index" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, United States Department of Labor.

(b) The regular periodic compensation payments after adjustment under this section shall be fixed at the nearest dollar. However, the regular periodic compensation after adjustment shall reflect an increase of at least one dollar (\$1.00). (Mar. 3, 1979, D.C. Law 2-139, § 2341, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-353.1, 1-353.33.

§ 1-353.42. Employees' Compensation Fund.

There is established in the District of Columbia government the Employees' Compensation Fund which consists of sums that the Council of the District of Columbia government and/or Congress, from time to time, may appropriate for or transfer to it and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. For the purpose of this section, "administrative expenses" does not include expenses for legal service performed by or for the Mayor under sections 1-353.31 and 1-353.32. (Mar. 3, 1979, D.C. Law 2-139, § 2342, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.43. Compensation leave.

Any employee who has used leave as a result of a job-related injury or occupational disease or illness approved by the District government shall have such leave restored to his or her credit at no cost to the employee in accordance with rules and regulations established by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 2343, 25 DCR 5740.)

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Disability Compensation Emergency Amendments of 1979 (D.C. Act 3-89, Aug. 16, 1979, 26 DCR 897); and sec. 2 of the District of Columbia Government

Comprehensive Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.44. Rules and regulations.

The Mayor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under section 1-353.24. The rules and regulations shall provide for an Employees' Compensation Appeals Board of three (3) individuals designated or appointed by the Mayor with authority to hear and, subject to applicable law and the rules and regulations of the Mayor, make final administrative decisions on appeals taken from determinations and awards with respect to claims of employees. The Mayor may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made. (Mar. 3, 1979, D.C. Law 2-139, § 2344, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.45. Career and educational services retention rights.

(a) In the event the individual resumes employment with the District government, the entire time during which the employee was receiving compensation under this subchapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes and other rights and benefits based upon length of service.

(b) Under rules and regulations issued by the Mayor the department or agency which was the last employer shall:

(1) immediately and unconditionally accord the employee, if the injury or disability has been overcome within two (2) years after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the District of Columbia government, the right to resume his or her former, or an equivalent, position as well as all other attendant rights which the employee would have had or acquired in his or her former position had he or she not been injured or disabled, including the rights to tenure, promotion and safeguards in reduction-in-force procedures, and

(2) if the injury or disability is overcome within a period of more than (2) years after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his or her former or equivalent position within such department or agency, or within any other department or agency.

(Mar. 3, 1979, D.C. Law 2-139, § 2345, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-353.46. Transfer of authority.

In accordance with subsection (e) of section 36-504, the disability compensation functions previously exercised by the United States Secretary of Labor relating to the processing of claims by injured employees of the District of Columbia are transferred to the Mayor on the date that this chapter becomes effective as provided in section 1-366.1. (Mar. 3, 1979, D.C. Law 2-139, § 2346, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXIV.—Reductions-In-Force

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-354.1. Policy.

The Mayor and the District of Columbia Board of Education shall issue rules and regulations establishing a procedure for the orderly termination of employees, taking full account of non-discrimination provisions and appointments' objectives of this chapter. Each agency shall be considered a competitive area for reduction-in-force purposes. Lesser or broader competitive areas within an agency are prohibited. When as a result of a reorganization order a function is transferred from one District agency to another District agency, the procedures for transferring the employees identified with the continuing function shall be negotiated with the recognized labor organization. (Mar. 3, 1979, D.C. Law 2-139, § 2401, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-354.2. Procedures.

(a) Reduction-in-force procedures shall establish the Career and Educational Services as the priority services and include: (1) A prescribed order of separation as provided below based on tenure of appointment, length of service including creditable federal and military service, veterans preference and relative work performance; (2) placement of employees affected by a reduction-in-force in vacant positions; (3) priority reemployment consideration for employees separated; (4) consideration of job sharing and reduced hours; and (5) employee appeal rights.

(b) (1) For purposes of this subchapter, a veterans preference eligible will be defined in accordance with federal law and regulations issued thereunder by the United States Civil Service Commission; (2) creditable service in determining length of service shall include all federal, District government and military service otherwise creditable for Civil Service retirement purposes; (3) current performance ratings documented and approved which recognize outstanding performance shall serve to increase the employee's service for reduction-in-force purposes by four (4) years during the period the outstanding rating is in effect. Performance ratings may not be changed subsequent to the establishment of retention registers and issuance of reduction-in-force notices; and (4) employees serving on temporary limited appointments or having unsatisfactory performance ratings are not entitled to retention rights and other provisions of this subchapter.

(c) A reduction-in-force action may not be taken until the employee has been afforded at least thirty (30) days advance notice of such an action. The notification required by this section must be in writing and must include information pertaining to the employees' retention standing and appeal rights.

(d) Policies and procedures developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations: Provided, however, that no such bargaining agreement may provide benefits or procedures of less employee protection than those contained in this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 2402, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-354.3. Responsibility.

The appropriate personnel authority shall be responsible for ensuring that the provisions of this subchapter and rules and regulations issued pursuant thereto are applied when effecting a reduction-in-force within their respective agency. (Mar. 3, 1979, D.C. Law 2-139, § 2403, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-354.4. Appeals.

An employee who has received a specific notice that he or she has been identified for release from his or her competitive level position through a reduction-in-force action may file an appeal with the Office of Employee Appeals if he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant thereto. Such an appeal must be filed no later than fifteen (15) calendar days after the effective date of the action. The filing of an appeal shall not serve to delay the effective date of the action. (Mar. 3, 1979, D.C. Law 1-139, § 2404, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXV.—Political Rights Of Employees

§ 1-355.1. Hatch Act retention.

The provisions of subchapter III of chapter 73 of Title 5 of the United States Code, affecting political activities of employees of the District of Columbia, shall remain effective. (Mar. 3, 1979, D.C. Law 2-139, § 2512, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-355.2. Protection of political rights of classroom teachers.

No provision of this subchapter shall be construed to limit the rights of classroom teachers to freely express political opinions. (Mar. 3, 1979, D.C. Law 2-139, § 2513, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter XXVI.—Retirement

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-356.1. Policy.

- (a) It is the purpose of this subchapter to establish a financially sound and equitable program of employee retirement benefits. With respect to retirement systems, the Council recognizes that existing programs, including the program administered by the federal government, are not now financed on an actuarially sound basis. Furthermore, the rights and benefits conferred by these systems and the financial implications for participation by employees vary significantly among systems.
- (b) The responsibility for creating an actuarially sound financial plan for existing retirement systems cannot and should not be borne solely by the District government. The Council therefore fully endorses the proposition that the federal government must assist the District government in establishing and maintaining the necessary financial base for all existing retirement systems. (Mar. 3, 1979, D.C. Law 2-139, § 2601, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-356.2. Retirement systems.

Except as provided in section 2603 of D.C. Law 2-139, existing retirement systems, which include the Civil Service Retirement System (chapter 83 of Title 5 of the United States Code), Teachers' Retirement System, Police and Fire Retirement System, Teachers Insurance Annuity Association programs and the Judges' Retirement System, shall continue to be applicable to all employees. (Mar. 3, 1979, D.C. Law 2-139, § 2602, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Compiler's note. The reference to "section 2603 of D.C. Law 2-139" in this section is set out as originally enacted.

Subchapter XXVII.—Temporary Assignment of District Employees

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-357.1. Policy.

(a) The District government recognizes that intergovernmental cooperation is an essential factor in resolving problems affecting the District and that the temporary assignment of personnel between and among governmental agencies, at the same or different levels of government and institutions of higher education, is a significant factor in achieving such cooperation.

(b) Any agency is authorized to participate in a program of personnel interchange with institutions of higher education or agencies of the federal, state and local governments: Provided, however, that the period of original assignment cannot exceed one (1) year, but with the concurrence of the agencies and the employee involved, the assignment period may be extended for an additional year. In no case may an assignment extend beyond two (2) years. (Mar. 3, 1979, D.C. Law 2-139, § 2701, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-357.2.

§ 1-357.2. Status of District employees while on assignment.

(a) Any employee of a District agency participating in an exchange of personnel as authorized in section 1-357.1 may be considered, during such participation, to be: (1) On detail to regular work assignments of the receiving agency; or (2) in a status of leave of absence from his or her positions in the sending agency;

(b) Any employee who is on detail is entitled to the same salary and benefits to which he or she would otherwise be entitled and shall remain an employee of the sending agency for all other purposes except that the supervision of duties during the period of detail may be governed by agreement between the sending agency and the receiving agency;

(c) An employee who is on a leave of absence is entitled to at least the same salary and benefits to which he or she would otherwise be entitled. The salary and benefits shall be paid by the receiving agency except as otherwise agreed between the sending and the receiving agencies;

(d) The receiving agency may grant annual leave or other time off with compensation to the extent authorized by law applicable to the sending agency;

(e) Except as otherwise provided in this chapter, an employee who is on a status of leave of absence has the same rights, benefits and obligations as any other employee of the sending agency who is on a leave of absence status for any other purpose;

(f) Any employee who participates in a temporary assignment under this subchapter and who suffers disability or death as a result of personal injury arising out of and in the course of the assignment, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the District's disability compensation program, as an employee who has

sustained such injury in the performance of such duty, but shall not receive disability or injury benefits under that program for any period for which he or she is entitled to and elects to receive similar benefits under the employee compensation of the receiving agency. (Mar. 3, 1979, D.C. Law 2-139, § 2702, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-357.3. Status of employees of other governments.

(a) When any agency of the District acts as a receiving agency, employees of the sending agency who are assigned under authority of this chapter may: (1) Be given appointments in the receiving agency covering the periods of such assignments with compensation to be paid from receiving agency funds or without compensation; or (2) be considered to be on detail to the receiving agency.

(b) The appointment of an employee of another government, assigned to a District agency, may be made without regard to the laws or rules and regulations governing the selection of employees in the Career and Educational Services.

(c) An employee of another government who is detailed to a District agency may not by virtue of such detail be considered to be an employee of the District, except as provided in this section, nor may he or she be directly paid a salary or wage by the District agency. The assignment agreement may, however, authorize the District agency to reimburse the sending agency for all or any part of the employee's salary and fringe benefits. The agreement between the sending agency and the receiving agency may govern the supervision of the duties of such employees during the period of detail.

(d) The District government shall treat any employee of a sending agency assigned to the District who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties as a District employee for the purpose of the District's employee disability compensation program. An employee is not entitled to benefits under that program for any period for which he or she elects similar benefits as an employee under the employee compensation program of his or her permanent employer. (Mar. 3, 1979, D.C. Law 2-139, § 2703, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-357.4. Travel expenses.

(a) A District agency may, in accordance with the applicable travel rules and regulations, pay the travel expenses of an employee assigned to another government or institution of higher education on either a detail or leave basis, but shall not pay the travel expenses of any employee incurred in connection with his or her work assignment at the receiving agency. If the assignment will be for a period of time exceeding nine (9) months, travel expenses may include expenses of transportation of immediate family, household goods and personal effects to and from the location of the receiving agency. If the period of assignment is less than nine (9) months, the District agency may pay a daily allowance to the employee on assignment or detail.

(b) A District agency may, in accordance with the applicable travel rules and regulations, pay travel expenses of a person assigned to it under this chapter during the period of such an assignment on the same basis as if he or she were a regular employee of the District.

(c) The costs associated with travel, relocation and daily expenses may be shared by the participating governments or institution of higher education or be borne solely by either party to the agreement. (Mar. 3, 1979, D.C. Law 2-139, § 2704, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-357.5. Agreements authorized.

Any assignment entered into by a District agency under the authority of this subchapter must be implemented by a written agreement and this agreement shall contain the following provisions: (1) The signature of the employee to be assigned indicating he or she fully concurs in the assignment and has been made aware of all appropriate rules and regulations governing the assignment; (2) the approval of appropriate officials of the sending and receiving agencies; (3) the terms and conditions for the payment of salary and other expenses, and any reimbursement among participating agencies; and (4) the duties and responsibilities to be carried out on the assignment. The agreement must be signed by all participants before the assignment can become effective. (Mar. 3, 1979, D.C. Law 2-139, § 2705, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXVIII. — Agreements Authorized

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-358.1. Authority.

The Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia are hereby authorized and empowered to enter into reciprocal agreements for the use of equipment, materials, facilities and services with any public or private agency or body for purposes deemed beneficial to the personnel system. For the purposes of agreements with federal agencies under this subchapter, the provisions of section 1-826 shall be met. (Mar. 3, 1979, D.C. Law 2-139, § 2801, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-361.8.

§ 1-358.2. Agreements required.

The Mayor shall enter into an agreement with the United States Civil Service Commission to carry out the purposes of subchapters XXI, XXII and XXVI of this chapter. (Mar. 3, 1979, D.C. Law 2-139, § 2802, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-358.3. Courts.

The Public Employee Relations Board is authorized to enter into agreements with the courts of the District of Columbia to implement a positive program of employee-employer relations. (Mar. 3, 1979, D.C. Law 2-139, § 2803, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-358.4. Transit Commission.

The Mayor is hereby authorized and empowered to enter into an agreement with the Washington Metropolitan Area Transit Commission to implement the inclusion of the employees of such Commission as participants in the United States Civil Service Retirement System (chapter 83 of Title 5 of the United States Code). (Mar. 3, 1979, D.C. Law 2-139, § 2804, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-358.5. Appropriate federal agencies.

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 2 of the District of Columbia Government Comprehensive

Merit Personnel Act Disability Compensation and Personnel Management Emergency Amendments of 1979 (D.C. Act 3-131, Nov. 20, 1979, 26 DCR 2427).

Subchapter XXIX. — Waiver of Claims for Erroneous Employee Payments

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-359.1. Policy and procedure.

(a) In accordance with rules and regulations issued by the Mayor, the Mayor may waive, in whole or part, a claim of the government of the District of Columbia against an employee or former employee of the District arising out of an erroneous payment made to him or her before or after the date this section becomes law when collection would be:

- (1) against equity;
- (2) against good conscience; and
- (3) not in the best interests of the District.

(b) The authority to waive any claim may not be exercised if there exists, in connection with the claim, an indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. After the expiration of three (3) years immediately following the date on which the erroneous payment of pay or retirement benefits was discovered or three (3) years immediately following the effective date of this section, whichever is later, the Mayor may not make any claim for erroneous payment of pay or retirement benefits.

(c) If the Mayor refuses to grant a waiver of the District’s claim, the person requesting the waiver is entitled to a hearing before the Office of Employee Appeals. After the hearing, the Office of Employee Appeals may waive the claim of the District in accordance with the standards set forth in subsections (a) and (b) of this section.

(d) A person who has repaid to the District all or part of the amount of a claim, with respect to which a waiver is granted under this subchapter, is entitled to a refund from the employing agency at the time of the erroneous payment, of the amount repaid to the District. The refund may not exceed the amount the employee has erroneously repaid.

(e) An erroneous payment, the collection of which is waived under this subchapter, is a valid payment for all purposes.

(f) This section does not affect the authority under any other statute to litigate, settle, compromise or waive any claim of the District of Columbia government. (Mar. 3, 1979, D.C. Law 2-139, § 2901, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXX. — Elimination of Personal Surety Bonds for District Employees

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-360.1. Policy.

(a) No agency may require or obtain surety bonds for any employee in connection with the performance of official duties.

(b) The personal financial liability to the District government of such employees and personnel is not affected by reason of subsection (a) of this section.

(c) Whenever the following occurs:

(1) it is necessary to restore or otherwise adjust the account of an accountable officer or his or her agent for any loss to the District due to the fault or negligence of that officer or agent; and

(2) the head of that agency determines that the amount of the loss is uncollectable, such amount shall be charged to the appropriation of funds available for the expenses of the accountable function at the time the restoration or adjustment is made. The restoration or adjustment does not affect the personal financial liability of that officer or agent on account of the loss.

(d) The restorations and adjustments provided for by subsection (c) of this section shall be made in accordance with rules and regulations issued by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 3001, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXXI. — Records Management and Privacy of Records

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-361.1. Policy; issuance of rules and regulations.

All official personnel records of the District government shall be established, maintained and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy while providing adequate, necessary and complete information for the District to carry out its responsibilities under this chapter. Such records shall be established, maintained and disposed of in accordance with rules and regulations issued by the Mayor. (Mar. 3, 1979, D.C. Law 2-139, § 3101, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-361.7.

§ 1-361.2. Cooperation with the United States Civil Service Commission.

Because of the statutory and administrative relationships in personnel administration between the District and federal governments, and to ensure that personnel records include information of importance to both governmental jurisdictions, the rules and regulations issued by the Mayor shall, insofar as is practicable, be consistent with civil service rules and regulations governing personnel records management in the federal service. (Mar. 3, 1979, D.C. Law 2-139, § 3102, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-361.8.

§ 1-361.3. Disclosure of official information.

It is the policy of the District government to make personnel information in its possession or under its control available upon request to appropriate personnel and law enforcement authorities, except if such disclosure would constitute an unwarranted invasion of personal

privacy or is prohibited under law or rules and regulations issued pursuant thereto. (Mar. 3, 1979, D.C. Law 2-139, § 3103, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-361.4. Rules and regulations affecting disclosure.

The Mayor shall issue rules and regulations governing the disclosure of official information contained in personnel records. (Mar. 3, 1979, D.C. Law 2-139, § 3104, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-361.5. Employee access to official personnel record.

(a) (1) The official personnel record of a District employee shall be disclosed to the employee or any representative of his or her choice. All such disclosure shall be made in the presence of a representative of the agency having custody of the records; and

(2) The following information which may be in an official personnel record shall not be disclosed to any employee: (A) Information which has been received on a confidential basis from a person under an agreement that the identity of the source of the information will not be disclosed: Provided, however, that such information may be disclosed if all information identifying the source of the information is deleted in such a manner to positively preclude identity of the source; (B) medical information, which, in the judgment of the employee's physician would be injurious to the health of the employee, if disclosed; (C) criminal investigative reports; (D) suitability inquiries and confidential questionnaires undertaken in accordance with rights afforded under this chapter; and (E) test and examination materials which may continue to be used for selection and promotion purposes: Provided, however, that the description of test and general results thereof shall be disclosed.

(b) Each employee shall have the right to present information immediately germane to any information contained in his or her official personnel record and seek to have irrelevant, immaterial or untimely information removed from the record.

(c) For the purpose of this subchapter, information other than a record of official personnel action is untimely if it concerns an event more than three (3) years in the past upon which an action adverse to an employee may be based. Immaterial, irrelevant or untimely information shall be removed from the official record upon the finding by the agency head that the information is of such a nature. Prior to the removal of any information in the file, the employer shall notify the employee and give him or her an opportunity to be heard. (Mar. 3, 1979, D.C. Law 2-139, § 3105, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-361.6. Appeals.

An employee may appeal any decision rendered by the Mayor or an agency head under the authority of this subchapter to the Office of Employee Appeals in such a manner as the Office of Employee Appeals shall prescribe. In such appeal, the employee seeking review of an agency decision rendered under the authority of this section shall have the burden of proof. (Mar. 3, 1979, D.C. Law 2-139, § 3106, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-361.7. Transfer of official personnel folders.

The system for the maintenance of the official personnel folder established under section 1-361.1 shall provide for the transfer of folders between agencies of the District government subject to this chapter when employees transfer from one agency to another. (Mar. 3, 1979, D.C. Law 2-139, § 3107, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

§ 1-361.8. Exchange of official personnel information.

The Mayor, pursuant to the provisions of sections 1-358.1 and 1-361.2, shall enter into an agreement with the United States Civil Service Commission for the exchange of official personnel information, to the extent mutually agreed upon, between the District and federal government in accordance with limitations imposed by this subchapter. (Mar. 3, 1979, D.C. Law 2-139, § 3108, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

*Subchapter XXXII. — Implementation; Conforming Amendments and
Repealers; Specific Retention of Laws and Authorities;
Rules of Construction*

§ 1-362.1. Continuation of personnel rules and regulations.

All personnel rules and regulations, issued under appropriate authority on or before the date that this section becomes effective as provided in subsection (b) of section 1-366.1, shall continue in full force and effect until superseded by a provision of this chapter. All administrative directives of whatever name issued by any personnel authority or the Chiefs of the Metropolitan Police Department or the District of Columbia Fire Department in effect on the date that this section becomes effective as provided in subsection (b) of section 1-366.1 shall remain in effect until superseded by a provision of this chapter. Such existing rules and regulations may be amended in accordance with existing provisions of law.

Persons employed by the District of Columbia government after March 3, 1979 shall be appointed under existing authority until the provisions of this chapter become effective. (Mar. 3, 1979, D.C. Law 2-139, § 3201, 25 DCR 5740.)

Emergency Act Amendment.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

§ 1-362.2. Specific supersession of existing laws and agreements for employees hired on and after the date that this chapter becomes effective as provided in section 1-366.1.

The following provisions of Title 5 of the United States Code are superseded for employees hired by the District government on or after the date that this chapter becomes effective as provided in section 1-366.1:

(a) General Regulations Authority:

Provisions of (1) 5 U.S.C. sec. 1302 (b) and (c) (relating to the development of regulations affecting employees of the District of Columbia); and (2) 5 U.S.C. sec. 1304 (a) (3) (relating to loyalty investigations affecting employees of the District of Columbia);

(b) General Provisions of Law Relating to Employees:

(1) 5 U.S.C. sec. 2102 (a) (3) (relating to employees of the District of Columbia in the competitive service); (2) 5 U.S.C. sec. 2108 (3) (E) (relating to certain preferences to veterans for employment with the District of Columbia government); and (3) 5 U.S.C. sec. 2905 (a) (relating to renewal of oaths by employees of the District government);

(c) Employment and Retention:

(1) 5 U.S.C. sec. 3101 (relating to general employment authority of the District of Columbia government); (2) 5 U.S.C. sec. 3102 (a) (1) (C) and (a) (2) (relating to the employment of readers for blind employees of the District of Columbia government); (3) 5 U.S.C. sec. 3108 (relating to the employment of detective agencies by the District of Columbia government); (4) 5 U.S.C. sec. 3110 (a) (1) (D) (relating to the employment of relatives of incumbents by the District of Columbia government); (5) 5 U.S.C. secs. 3315 (a) and 3316 (relating to the employment of preference eligibles by the District of Columbia government); (6) 5 U.S.C. sec. 3320 (relating to the District of Columbia government excepted service); (7) 5 U.S.C. sec. 3323 (a) (relating to automatic separations and the reemployment of annuitants by the District of Columbia government); (8) 5 U.S.C. sec. 3333 (a) and (b) (relating to loyalty of and striking against the government by employees of the District of Columbia government); (9) 5 U.S.C. secs. 3351 and 3363 (relating to transfers and promotion of employees of the District of Columbia government); (10) 5 U.S.C. sec. 3504 (relating to retention of preference eligible employees of the District of Columbia government); and (11) 5 U.S.C. sec. 3551 (relating to restoration of positions after active or duty training by employees of the District of Columbia government);

(d) Employee Performance:

(1) 5 U.S.C. secs. 4101 (1) (F) and (3), 4301 (1) (F) and (2) (D) (relating to training and performance and ratings of employees of the District of Columbia government); and (2) 5 U.S.C. sec. 4501 (1) (G), (2) (B) and (3) (relating to incentive awards for employees of the District of Columbia government);

(e) Pay and Allowances:

(1) 5 U.S.C. sec. 5102 (a) (1) (G) (relating to the classification of employees of the District of Columbia government); (2) 5 U.S.C. sec. 5307 (a) (1) (relating to the fixing of pay by administrative action for certain employees of the District of Columbia government); (3) 5 U.S.C. sec. 5337 (a) (2) (relating to pay savings provisions for certain general schedule employees of the District of Columbia government); (4) 5 U.S.C. sec. 5344 (b) (relating to the effective date of wage increases for certain employees of the District of Columbia government); (5) 5 U.S.C. sec. 5349 (a) (relating to employees in recognized trades and crafts employed by the District of Columbia government); (6) 5 U.S.C. secs. 5351 (1), 5352 and 5353 (relating to student employees employed by the District of Columbia government); (7) 5 U.S.C. secs. 5504 (a) (3), (b) (3) (D), 5506, 5508, 5515, 5521 (1) (E), (3) (B), 5522 (c), 5523 (a) (1) (B), (c), 5527 (b), 5531 (2), 5534, 5534a, 5537 (a) (2), 5541 (1) (G), (2) (B), 5541 (2) (c) (ii), (iii), (iv), 5546 (b), 5551 (a), 5552, 5581 (1) (B), (2), 5583 (b) (1), 5595 (1) (D), (d), (f) and 5596 (a) (5) (relating to pay administration for employees of the District of Columbia government); (8) 5 U.S.C. secs. 5701 (1) (E), (5) and 5721 (1) (H) and (4) (relating to travel, transportation, and subsistence allowances for employees of the District of Columbia government); and (9) 5 U.S.C. secs. 5901 (a), 5945 and 5946 (1) (relating to certain allowances for employees of the District of Columbia government);

(f) Leave:

5 U.S.C. secs. 6101 (a) (1), (a) (2), (a) (3), (a) (4), 6103 (c), 6104, 6301 (2) (B), 6306 (a), 6307 (a), (c), 6808, 6322 (a), (b), 6323, 6324 (a), (b) (1) and 6326 (a) (relating to attendance and leave provisions for employees of the District of Columbia government);

(g) Loyalty, Striking and Civil Disorders:

5 U.S.C. secs. 7311, 7313 (a) and 7351 (relating to loyalty, striking and participation in civil disorders by employees of the District of Columbia government and rendering gifts to supervisors);

*(h) Repealed Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.**(i) Adverse Actions:*

5 U.S.C. sec. 7511 (1) (relating to adverse actions affecting certain employees of the District of Columbia government);

(j) Safety Programs:

5 U.S.C. sec. 7902 (a) (2) (relating to safety programs for employees of the District of Columbia government); and

(k) Compensation for Work Injuries:

5 U.S.C. secs. 8101 (1) (D) and 8139 (relating to workmen's compensation claims for employees of the District of Columbia government).

(Mar. 3, 1979, D.C. Law 2-139, § 3202, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.)

Effect of Amendment.

1979 — Act Aug. 1, 1979, D.C. Law 3-14, amended section by repealing subsection (h), which dealt with political activities by certain employees of the District of Columbia government.

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979 (D.C. Act 3-14, Mar. 1, 1979, 25 DCR 8244); sec. 2 of the District of Columbia Government Comprehensive Merit

Personnel Act Second Emergency Amendments of 1979 (D.C. Act 3-45, May 29, 1979, 25 DCR 10468); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 3-14. See note to § 1-338.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-362.3. Fire and police.

The provisions of this section shall not apply to police officers and firefighters appointed after the date that this chapter becomes effective as provided in section 1-366.1.

- (a) (1) Section 4-823, note;
- (2) Sections 4-102, 4-103, 4-110, 4-124, 4-125, 4-127 and 4-129;
- (3) Sections 4-126, 4-104, 4-128, 4-129 and 4-130;
- (4) Section 4-105;
- (5) Section 4-106a;
- (6) Sections 4-107 and 4-403;
- (7) Section 4-111;
- (8) Sections 4-131 and 4-406;
- (9) Sections 4-132a and 4-409a;
- (10) Sections 4-182 through 4-184;
- (11) Section 4-186;
- (12) Sections 4-402, 4-404 and 4-407;
- (13) Section 4-404a;
- (14) Section 4-408a;
- (15) Section 4-408b;
- (16) Section 4-501 et seq.;
- (17) Sections 4-601 through 4-603;
- (18) Section 4-701 et seq.;
- (19) Section 4-824 et seq.;
- (20) Section 4-802;
- (21) Sections 4-807, 4-808 and 4-809 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (22) Section 4-821;
- (23) Sections 4-902 and 4-903;
- (24) Section 4-904 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (25) Section 4-910;
- (26) Sections 4-106, 4-121 and 4-122;
- (27) Section 4-108a;
- (28) Sections 4-182a, 4-183a and 4-183b; and
- (29) Section 4-123.
- (b) (1) Reorganization Order 39, June 18, 1953, as amended (relating to fire trial boards); and (2) Reorganization Order 48, June 26, 1953, as amended (relating to police trial and review boards).

(c) Notwithstanding any other provision of this section, no provision of law affecting the United States Park Police, Executive Protective Service or Secret Service shall be deemed to be affected.

(Mar. 3, 1979, D.C. Law 2-139, § 3203, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-362.4. Express retention of certain District of Columbia laws.

The express provisions of the following District of Columbia laws shall continue in force and are not to be considered impliedly repealed in any manner by the provisions of this chapter.

(a) The provisions of Title 18 of the United States Code insofar as they affect employees of the District of Columbia government shall not be affected by this chapter: Provided, however, that this provision shall not be construed to prohibit coverage of volunteers under the provisions of subchapter XXIII of this chapter;

(b) The provisions of section 1-215a et seq. shall continue in force except that volunteers shall be entitled to disability compensation as provided in subchapter XXIII of this chapter;

(c) The provisions of sections 1-314b, 1-314b note and 28-2701 shall continue in force;

(d) Section 1-320a shall continue in force;

(e) Section 6-2201 et seq. shall continue in force; and

(f) The Metropolitan Police Officer Civil Rights Act (D.C. Law 2-71).

(Mar. 3, 1979, D.C. Law 2-139, § 3206, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

§ 1-362.5. Miscellaneous provisions.

(a) Commissioner's Order 25, June 19, 1970; Resolution 75-3 of the District of Columbia Board of Higher Education, June 10, 1975; Chapter XVIII of the Rules of the District of Columbia Board of Education, November 6, 1975; and the September 1975 Armory Board policy relating to labor relations are deemed to be superseded by this chapter;

(b) Any law, rule and regulation, Commissioner's Order, Mayor's Order, Mayor's Memorandum or any administrative rule and regulation which is inconsistent with or contrary to the provisions of this chapter is repealed or superseded to the extent of such inconsistency on or after the effective date of this chapter;

(c) Any provision of the District Personnel Manual (DPM) which, while not expressly repealed or inconsistent with any provision of this chapter, lacks a statutory basis under this chapter is repealed on the effective date of this chapter; and

(d) Notwithstanding any other provision of this chapter, wherever Federal Merit System Standards are applicable to a District program financed in whole or in part by the federal funds, the Mayor shall establish rules and regulations to the extent necessary to apply such standards to personnel administration in such grant-in-aid programs and the positions and employees therein. (Mar. 3, 1979, D.C. Law 2-139, § 3205 (a)-(d), 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-362.6. Rules of construction.

In accordance with the express terms of this chapter, the following rules of construction will apply in the interpretation of provisions in apparent conflict:

(a) Subchapter II will govern conflicting provisions; and

(b) A parenthetical limitation, upon provisions of a section or subchapter preceding it, shall limit the scope of the section or subchapter to the parenthetical provision.

(Mar. 3, 1979, D.C. Law 2-139, § 3208, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

§ 1-362.7. Mayoral nominees.

The Mayor may nominate persons to serve as subordinate agency heads in the Executive Service (as created by subchapter X of this chapter), members of the Public Employee Relations Board and members of the Office of Employee Appeals, subject to the advice and consent of the Council of the District of Columbia, within ninety (90) days of the date such nominations are transmitted to the Chairman of the Council by the Mayor during which the Council is in continuous session. Failure of the Council to act during this time period shall cause the Mayoral nominee to be deemed confirmed. This provision shall not apply to the Secretary of the District of Columbia, the Executive Secretary to the Board of Appeals and Review, and the Executive Director of the Commission on the Status of Women. (Mar. 3, 1979, D.C. Law 2-142, § 2, 25 DCR 6112.)

Legislative History of Law 2-142. Law 2-142 was introduced in Council and assigned Bill No. 2-11, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Vetoed by the

Mayor on November 27, 1978, and enacted without signature on December 12, 1978, it was assigned Act No. 2-312 and transmitted to both Houses of Congress for its review.

Subchapter XXXIII.—Appropriations

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-363.1. Authorization of appropriations.

Appropriations necessary to carry out the purposes of this chapter are hereby authorized. (Mar. 3, 1979, D.C. Law 2-139, § 3301, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXXIV.—Annual Report

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-364.1. Annual report.

Annually, not more than sixty (60) days after the completion of each fiscal year, the Mayor, the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall transmit to the Council a report indicating the accomplishments of the personnel system, major problems confronting the system and actions being taken or proposed to correct such deficiencies, a review of the more pertinent policies and rules and regulations issued, a statistical analysis of personnel actions and other information the Mayor and each Board deems pertinent. Sufficient copies of this report shall be made available to allow for public distribution. (Mar. 3, 1979, D.C. Law 2-139, § 3401, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Subchapter XXXV.—Separability

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-365.1. Separability.

Should any provision of this chapter be declared unconstitutional, invalid or beyond the statutory authority of the Council of the District, the remaining provisions of this chapter shall be unaffected by such a declaration. (Mar. 3, 1979, D.C. Law 2-139, § 3501, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

*Subchapter XXXVI.—Effective Date Provisions***§ 1-366.1. Effective date provisions.**

(a) The provisions of subchapters IX (except sections 1-339.4 and 1-339.7) and X of this chapter, subsection (a) of section 1-335.1, subsection (a) of section 1-336.1 and section 1-366.2 shall become effective fifteen (15) days after March 3, 1979.

(b) The provisions of section 1-362.1 shall become effective on March 3, 1979.

(c) The provisions of section 1-341.9 shall become effective on March 3, 1979: Provided, however, that such provisions shall only apply to the Mayor, Chairman and Members of the Council taking the oath of office after January 1, 1979.

(d) The provisions of section 1-341.13 shall become effective on September 1, 1978, and shall apply to all negotiations for compensation as authorized under section 1-347.16 for compensation to be paid on and after January 1, 1980.

(e) The provisions of section 1-341.14 shall become effective on March 3, 1979, apply retroactively to compensation to be paid as provided therein after September 30, 1978, and expire on September 30, 1980: Provided, however, that if a collective bargaining agreement concerning compensation is entered into between appropriate personnel authorities (management) and recognized labor organizations for employees of the Metropolitan Police Department, the District of Columbia Fire Department, or the District of Columbia Board of Education which supersedes the provisions of section 1-341.14, such provisions shall expire on the day after the date that the agreement's terms commence.

(f) Repealed. Aug. 1, 1979, D.C. Law 3-14, § 2 (d), 25 DCR 10565.

(g) Repealed. Aug. 1, 1979, D.C. Law 3-14, § 2 (d), 25 DCR 10565.

(h) Repealed. Aug. 1, 1979, D.C. Law 3-14, § 2 (d), 25 DCR 10565.

(i) The Office of Employee Appeals and the Public Employee Relations Board shall each issue rules and regulations for the conduct of their respective business, as provided in subsections 1-334.4 (f) and 1-336.2 (a) (5), and subsections 1-334.4 (e) and 1-335.2 (k), respectively, within one hundred eighty (180) days of their appointment.

(j) The provisions of section 1-335.2 (k) shall be effective on the date following the day that the members of the Public Employee Relations Board have been appointed: Provided, however, that employees of the Public Employee Relations Board shall provide staff support to the Board of Labor Relations from the date of its taking office.

(k) The provisions of subchapters I, II, III, IV, VII, XV, XVIII, XX, XXI, XXII, XXIII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXIV and XXXV of this chapter, and sections 1-355.1 and 1-355.2 shall become effective on April 1, 1979, or on the sixtieth (60th) day following March 3, 1979, whichever is later.

(1) The provisions of subchapters V, VI, XVI and XVII of this chapter shall become effective sixty (60) days after the date that rules and regulations are issued by the respective Office of Employee Appeals and the Public Employee Relations Board.

(m) The provisions of subchapters VIII, VIIIA, XI, XII, XIII, XIV, XIX and XXIV of this chapter shall become effective on January 1, 1980: Provided, however, that any earlier date contained within such subchapters shall be effected.

- (n) The provisions of sections 1-339.4 and 1-339.7 shall become effective on January 1, 1980.
- (o) The provisions of this section shall become effective on March 3, 1979.
- (p) The provisions of subchapter XXXII of this chapter shall become effective as follows:
- (1) Subsections (a), (b), (c), (d), (e) and (f) of section 1-362.2 shall become effective on January 1, 1980;
 - (2) Subsections (g) and (i) of section 1-362.2 shall become effective as provided in subsection (l) of this section;
 - (3) Subsections (j) and (k) of section 1-362.2 shall become effective as provided in subsection (k) of this section;
 - (4) Section 1-362.3 shall become effective on January 1, 1980;
 - (5) Sections 31-101, 31-102, 31-105, 31-1402, 31-1501 note, 31-1522, 31-1714, 31-1716, 31-1717 and 31-1735 shall become effective on January 1, 1980;
 - (6) Sections 1-128, 1-213 to 1-213b, 1-251, 1-254, 1-260, 1-262, 1-310a, 1-313, 1-314, 1-316, 1-320, 1-321, 1-518, 1-1104 to 1-1106, 1-1151, 1-1354, 2-103, 2-408, 2-1012, 2-1234, 2-1236, 2-1726, 2-1808, 2-2224, 2-2225, 2-2415, 3-105, 5-105, 5-426, 5-617, 5-713, 6-1203, 6-1712, 6-1912, 8-209, 25-104, 25-104a, 29-935, 29-1093, 31-1905, 31-2004, 31-2005, 32-334, 32-1319, 33-422, 36-122, 36-437, 37-105, 40-603, 40-715, 40-809, 43-201, 43-205, 43-206, 45-702, 45-703, 45-1403, 46-313, 47-113a, 47-646, 47-2809, 49-401 and Organization Order No. 127 shall become effective on January 1, 1980;
 - (7) Sections 1-1171, 1-1181 and 1-1182 shall become effective as provided in subsection (a) of this section;
 - (8) Section 1-362.4 shall become effective on March 3, 1979;
 - (9) Subsection (a) of section 1-362.5 shall become effective as provided in subsection (l) of this section;
 - (10) Subsection (d) of section 1-362.5 shall become effective on January 1, 1980;
 - (11) Sections 4-838, 4-839 and 31-1501a shall become effective as provided in subsection (d) of this section;
 - (12) Subsections (b) and (c) of section 1-362.5 shall become effective on March 1, 1980;
 - (13) Section 1-362.6 shall become effective on March 3, 1979.
- (q) Notwithstanding any other subsection of this section, any personnel authority or agency vested with authority to issue rules and regulations pursuant to section 1-334.4 may issue such rules and regulations prior to the effective date of such authority.
- (r) Persons performing personnel functions to be transferred to the Office of Personnel under the authority of section 1-334.7 shall be transferred no later than ninety (90) days after the Office is created. (Mar. 3, 1979, D.C. Law 2-139, § 3602, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2 (d), 25 DCR 10565.)

Effect of Amendment.

1979 — Act Aug. 1, 1979, D.C. Law 3-14, amended section by repealing subsections (f), (g) and (h), which dealt with the effective dates of sections 2501 to 2511, 3202 (h) and 3205 (kk) of D.C. Law 2-139.

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Amendments of 1979 (D.C. Act 3-14, Mar. 1, 1979, 25 DCR 8244); sec. 2 of the District of Columbia Government Comprehensive Merit

Personnel Act Second Emergency Amendments of 1979 (D.C. Act 3-45, May 29, 1979, 25 DCR 10468); and sec. 2 of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 3-14. See note to § 1-338.1.

Section referred to in sections. 1-332.4, 1-336.1, 1-338.1, 1-338.2, 1-339.6, 1-340.2, 1-341.12, 1-353.46, 1-362.1, 1-362.2, 1-362.3.

§ 1-366.2. Implementation Task Force.

(a) There is hereby established a Task Force on the Implementation of the Merit Personnel Act (hereinafter referred to in this section as the "Task Force") which shall be composed of the following members: (1) Two (2) members appointed by the Mayor; (2) two (2) members appointed by the Greater Washington Central Labor Council; (3) two (2) members appointed by the Committee on Government Operations of the Council; and (4) one (1) member appointed by the Chairman of the Council of the District of Columbia. The members shall elect one (1) of their members as Chairperson.

(b) Each member of the Task Force shall receive payment of one hundred dollars (\$100) for each eight (8) hours actually worked per diem or twelve dollars fifty cents (\$12.50) per hour, whichever provides less, while in the service of the Task Force. The members shall also receive reimbursement for the payment of actual expenses incurred in the service of the Task Force.

(c) The Task Force shall study and review the implementation of this chapter giving special attention to the implementation timetable set forth in this subchapter. The Task Force shall advise the Mayor and the Council of the District of Columbia within ninety (90) days of the date of their appointment under subsection (d) of this section as to the need for any adjustments in the timetables set forth in this subchapter and the Council may, by act, modify such timetables. The Task Force may engage in other activities as provided in this subsection.

(d) Members of the Task Force shall be appointed from constituencies as provided in subsection (a) of this section within thirty (30) days of March 3, 1979. Any vacancies which occur in the membership of the Task Force shall be replaced from the same constituency represented by the member creating a vacancy. No person otherwise in the employ of the District government appointed to the Task Force may receive the per diem or hourly payment provided in subsection (b) of this section.

(e) The Task Force shall be disbanded no later than December 1, 1979. (Mar. 3, 1979, D.C. Law 2-139, § 3603, 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 5.—NOTARIES PUBLIC

Sec.
1-518. Appropriation — Inclusion of expenses and salaries
in Commissioner’s annual estimates.

§ 1-518. Appropriation — Inclusion of expenses and salaries in Commissioner’s annual estimates.

Appropriation is hereby authorized to be made to carry out the provisions of this section and sections 1-504 and 1-507, and the Commissioner of the District of Columbia is authorized to include in his annual estimates provision for all expenses incident to such purposes, including the purchase of equipment and supplies and the payment of salaries to personnel. (Dec. 16, 1944, 58 Stat. 811, ch. 597, § 5; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a); Mar. 3, 1979, D.C. Law 2-139, § 3205 (c), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “subject to the limitations of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” from the end of the section.

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 6.—SURVEYOR

Sec.
1-629. Mayor to revise fees for Surveyor — Notice of
revision of fee schedule — Inspection of fee

schedule — Employment of registered land
surveyor.

§ 1-618. Subdivisions — Alterations — Changes.

NOTES TO DECISIONS

Cited in *American Univ. Park Citizens Ass’n v Burka*
(D.C. 1979, 400 A.2d 737).

§ 1-620. Subdivisions.

NOTES TO DECISIONS

Cited in *American Univ. Park Citizens Ass'n v. Burka*
(D.C. 1979, 400 A.2d 737).

§ 1-629. Mayor to revise fees for Surveyor — Notice of revision of fee schedule — Inspection of fee schedule — Employment of registered land surveyor.

(a) The Mayor of the District of Columbia is hereby authorized to revise, as necessary, the schedule of fees to be charged for services rendered by the Surveyor of the District of Columbia. Such fees shall be established by the Mayor in such amounts as, in his judgment, will be commensurate with the cost to the District of Columbia for providing the services rendered by the Office of the Surveyor. Notice of any revision of the schedule of fees shall be published in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), and in addition, shall be filed with the Council of the District of Columbia at least thirty (30) days prior to their effective date. The schedule of fees established by the Mayor shall be available for inspection in the Office of the Surveyor.

(b) If the Office of the Surveyor is unable to complete and record any survey within ninety (90) days after a written request for the survey is filed, the Surveyor shall notify the applicant for the survey of the estimated date when the survey will be performed and such applicant may, at his election, either reaffirm his request for the Office of the Surveyor to perform the survey or withdraw his request for the survey and request in writing a full refund of the fees paid to the Surveyor. Any applicant, including an applicant who has withdrawn his request for a survey pursuant to this subsection, may employ, at his expense, a registered land surveyor to perform the survey. Such registered land surveyor employed pursuant to this subsection shall perform the survey under the direction of and in accordance with procedures established by the Surveyor. This subsection shall not apply to any department or agency of the government of the District of Columbia.

(c) For the purposes of this section, a “registered land surveyor” shall mean any person or firm approved and permitted by the Office of the Surveyor to prepare and certify surveys and subdivision plats in the District of Columbia, including, but not limited to, registered civil engineers. The Surveyor is authorized to establish and enforce standards and operating procedures for the performance of surveys by registered land surveyors under subsection (b) of this section. The Surveyor is further authorized to establish and maintain a list of approved registered land surveyors who may be utilized by applicants for surveys pursuant to subsection (b) of this section.

(d) The Mayor is authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this section. (Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1593; Mar. 3, 1979, D.C. Law 2-149, § 2, 25 DCR 7035.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-149, amended section by designating the formerly undesignated provisions of this section as subsection (a), by rewriting the first sentence and adding the last three sentences in that subsection, and by adding subsection (b), (c) and (d).

Legislative History of Law 2-149. Law 2-149 was introduced in Council and assigned Bill No. 2-372, which

was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-338 and transmitted to both Houses of Congress for its review.

CHAPTER 8.—CONTRACTS

*Subchapter I.—General Provisions***§ 1-808. Advertisement for proposals for purchases and contracts for supplies or services; application to sales and contracts to sell.**

Section referred to in section. 32-1351.

§ 1-826. Agreements between United States and District of Columbia for reimbursable services — Delegation of functions — Costs and payments — Exception.

Section referred to in section. 1-358.1.

CHAPTER 9.—CLAIMS AGAINST DISTRICT

§ 1-902. Settlement of claims and suits against the District of Columbia — Cases that may be settled — Defenses.

Robert J. Pierce. Pursuant to the authority of this section, D.C. Law 2-106, Sept. 13, 1978, 25 DCR 1383, was enacted to read as follows:

"IN THE COUNCIL OF THE DISTRICT OF COLUMBIA, *September 13, 1978*, to render payment to Robert J. Pierce for injuries which he received during the March 9, 1977, terrorist takeover of the District Building.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the 'Robert J. Pierce Act of 1978.'

Sec. 2. The Mayor of the District of Columbia is hereby authorized and directed to pay, pursuant to appropriate appropriations, out of the general fund of the District of Columbia, to Robert J. Pierce of the District of Columbia, a sum not to exceed \$480,000.

(a) The payment of such sum shall be in full satisfaction of all claims against the District of Columbia, its employees and agents by Robert J. Pierce, his heirs, executors, administrators and assigns arising out of the personal injuries sustained by him, due to extraordinary circumstances, on March 9, 1977.

(b) Robert J. Pierce was injured, while serving as a volunteer law student intern to the Council of the District of Columbia, during the terrorist takeover of the District Building. Such injuries left him partially paralyzed and permanently disabled.

(c) The receipt of any funds awarded pursuant to this act shall be disregarded in determining the eligibility and financial status of Robert J. Pierce for any public medical

or rehabilitative services of the District of Columbia for which he would otherwise be entitled.

Sec. 3. Payment authorized by this legislation shall be in addition to services or benefits payment under the Federal Employees Health Benefits Program.

Sec. 4. (a) No part of the payment made pursuant to this act in excess of ten per centum (10%) thereof shall be paid or delivered to or received by any agent or attorney for services rendered in connection with all claims against the District of Columbia described above. It shall be unlawful to exceed that per centum ceiling, any contract to the contrary notwithstanding.

(b) Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not exceeding one thousand dollars (\$1,000).

Sec. 5. This act shall take effect as provided for acts of the Council of the District of Columbia in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act."

Civil suits permitted. Act Dec. 29, 1979, Pub. L. 96-170, 93 Stat. 1284, provided that civil suits under section 1979 of the Revised Statutes (42 U. S. C. 1983) are permitted against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws occurring after the date of the enactment of Pub. L. 96-170.

*Non-Liability of District Employees***§ 1-921. Definitions.**

NOTES TO DECISIONS

Cited in *Bates v. Harp* (1978, 573 F.2d 930).

CHAPTER 10.—NATIONAL CAPITAL PLANNING COMMISSION

§ 1-1002. The Commission — Composition — Functions.

Comprehensive plan goals and policies. Act Mar. 3, 1979, D. C. Law 2-134, established the goals and policies of

the District of Columbia as the first District element of the comprehensive plan for the National Capital.

NOTES TO DECISIONS

Authority to adopt a new comprehensive plan is vested jointly in the District of Columbia (as to local elements of the plan) and the National Capital Planning Commission (as to federal elements of the plan). *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Effect of 1973 amendment on role of Commission. — After July 1, 1974 (the effective date of the 1973 amendment to this section), the planning role of the National Capital Planning Commission became limited to preparing the federal elements of the comprehensive plan for the National Capital and to exercising veto authority over the proposed district elements which it found would have a negative impact on the interests of the federal establishment. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

No time limit is set for preparation of the plan, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Meanwhile 1968 plan does not control. — Although the plan to be adopted pursuant to subsection (a) has not yet been published, there was no Congressional intent that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

CHAPTER 11.—ELECTIONS

| Sec. | Sec. |
|---|--|
| 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties. | hours — Method of deciding tie votes — Naming successor to official who dies, resigns, or is unable to serve — Filling vacancies on Board of Education. |
| 1-1102. Definitions. | 1-1111. Petition for recount by candidate — Procedure — Expenses — Petition for recount by voter to District of Columbia Court of Appeals — Grounds for voiding election. |
| 1-1103. Board of Elections and Ethics — Terms of office — Vacancies — Designation of Chairman. | 1-1114. False registration, fraud, and other corrupt practices in elections — Penalties. |
| 1-1104. Qualifications and compensation of members. | 1-1115. Candidacy for more than one office not permitted — Choice of nominations — Withdrawal from multiple nominations — Candidacy of officeholder for other office restricted. |
| 1-1105. Functions and authority of Board — Presidential preference primary election. | 1-1116. Initiative and referendum process. |
| 1-1106. Board independent agency — District to furnish facilities to Board — Seal. | 1-1117. Recall process. |
| 1-1107. Registration — Conditions for registration — Registration application and notification — Hearings — Appeals. | 1-1118. Timeliness of action. |
| 1-1109. Method of voting — Place — Watchers — Challenging of votes — Appeal from challenged ballots — Handicapped and absent voters — Voting in party elections — Election of unopposed candidates — Availability of regulations. | 1-1119. Severability. |
| 1-1110. Dates for holding elections — Votes cast for President and Vice President to be counted as votes for presidential electors — Voting | 1-1119.1. Issuance of rules and regulations. |
| | 1-1119.2. Applicability to petitions with signatures obtained on or after October 1, 1978, and before June 7, 1979. |
| | 1-1119.3. Effective date. |

§ 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

* * * * *

(2) Delegates to conventions and conferences of political parties including delegates to nominate candidates for the Presidency and Vice Presidency of the United States: Provided, that all elections for delegates to conventions and conferences of political parties, upon the request of the said party, shall be scheduled at the same time as primary, general, or special elections already scheduled for other purposes.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended paragraph (2) generally.

Emergency Act Amendment.
1978 — For temporary amendment of subsection (2), see sec. 2 of the Election of Delegates Emergency Act of 1978 (D.C. Act 2-253, Aug. 2, 1978, 25 DCR 2004).

Legislative History of Law 2-101. Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations.

The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Aug. 18, 1978, D.C. Law 2-101, provided: “That this act may be cited as the ‘Full Political Participation Act of 1978.’ ”

Section referred to in sections. 1-1141, 1-1151.

§ 1-1102. Definitions.

For the purposes of this chapter —

* * * * *

(10) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(11) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts, or some part or parts of acts, of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts or part or parts of acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

(12) The term “recall” means the process by which the registered qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

(13) The term “elected official” means the Mayor, the Chairman and members of the Council, the President and members of the Board of Education, the Delegate to Congress for the District of Columbia, and Advisory Neighborhood Commissioners of the District of Columbia.

(14) The term “printed” shall include any document produced by letterpress, offset press, photo reproduction, multilith, or other mass reproduction means.

(15) The term “proposer” means one or more of the registered qualified electors of the District of Columbia, including any entity, the primary purpose of which is the success or defeat of a political party or principle, or any question submitted to vote at a public election by means of an initiative, referendum or recall as authorized in amendments numbered 1 and 2 to title IV of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, secs. 1-181 to 1-195). Such entities shall be treated as a political committee as defined in section 1-1121 (e), for the purpose of this chapter.

(As amended June 7, 1979, D.C. Law 3-1, § 2(a), 25 DCR 9454.)

Effect of Amendment.
1979 — Act June 7, 1979, D.C. Law 3-1, amended section by adding paragraphs (10) through (15).
Legislative History of Law 3-1. Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to

the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

§ 1-1103. Board of Elections and Ethics — Terms of office — Vacancies — Designation of Chairman.

* * * * *

(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) generally.

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1104. Qualifications and compensation of members.

* * * * *

(c) (1) Each member of the Board, excluding the Chairman, shall receive compensation, as provided in section 1-341.8, while actually in the service of the Board, not to exceed the sum of twelve thousand five hundred dollars (\$12,500) per annum.

(2) The Chairman of the Board shall receive compensation, as provided in section 1-341.8, while actually in the service of the Board, not to exceed the sum of twenty-six thousand five hundred dollars (\$26,500) per annum.

* * * * *

(As amended Mar. 10, 1978, D.C. Law 2-50, § 2, 24 DCR 4806; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(v), 25 DCR 5740.)

Effect of Amendments.
1978 — Act Mar. 10, 1978, D.C. Law 2-50, and Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) of section generally.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “as provided in section 1-341.8” for “at the rate of one hundred dollars (\$100) for each eight-hour period or twelve dollars and fifty cents (\$12.50) per hour, whichever provides less” in paragraphs (1) and (2) of subsection (c).
Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2(l) of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-50. Law 2-50 was introduced in Council and assigned Bill No. 2-153, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 25, 1977 and November 8, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-106 and transmitted to both Houses of Congress for its review.
Legislative History of Law 2-101. See note to § 1-1101.
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1105. Functions and authority of Board — Presidential preference primary election.

(a) The Board shall —

* * * * *

(13) prescribe such regulations and expressly delegate authority to officials and employees of the Board as it considers necessary to carry out its statutory purpose of administering the laws governing elections under this chapter;

- (14) take reasonable steps to facilitate voting by blind, physically handicapped, and developmentally disabled persons, qualified to vote under this chapter, and to authorize such persons to cast a ballot with the assistance of a person of their own choosing; and
- (15) perform such other duties as are imposed upon it by this chapter.

* * * * *

(e) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Mayor of the District of Columbia. The Board, at the request of the Director of Campaign Finance, shall provide such employees, subject to the compensation provisions of this subsection, as requested to carry out the powers and duties of the Director. Employees so assigned to the Director shall, while so assigned, be under the direction and control of the Director and may not be reassigned without the concurrence of the Director.

No provision of this chapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (v), 25 DCR 5740.)

Effect of Amendments.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “and” in paragraph (13) of subsection (a), redesignating paragraph (14) of subsection (a) as (15) and inserting a new paragraph (14) and by adding “and may not be reassigned without the concurrence of the Director” to the last sentence of the first paragraph of subsection (e).
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “without reference to the provisions of

chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” from the end of the first sentence of subsection (e).
Legislative History of Law 2-101. See note to § 1-1101.
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-366.1, 1-1115.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1106. Board independent agency — District to furnish facilities to Board — Seal.

(a) In the performance of its duties, the Board shall not be subject to the direction of any nonjudicial officer of the District, except as provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.).

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (ggg), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding “except as provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.)” to the end of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1107. Registration — Conditions for registration — Registration application and notification — Hearings — Appeals.

* * * * *

(d) After January 1, 1976, the Board shall distribute a sufficient quantity of such forms to post offices, libraries, schools, firehouses, churches, banks, settlement houses, food establishments, in the District of Columbia, and such other places in the District of Columbia, as the Board deems appropriate.

* * * * *

(h) The Board shall cause a current copy of the list of qualified electors registered to vote to be placed in public buildings of the District of Columbia for a period of not less than fourteen (14) days preceding each election held under this chapter as follows: (1) A city-wide list shall be placed in the main public library; and (2) a ward list for the ward shall be placed in every branch library located within the respective ward.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking the last sentence of subsection (d) and by adding subsection (h).
Emergency Act Amendments.
1978 — For temporary repeal of subsection (d), see sec. 2 of the First Emergency Biannual Mass Mail Registration

Applications Mailing Requirement Repeal Act of 1978 (D.C. Act 2-191, May 11, 1978, 24 DCR 9820); and sec. 2 of the Second Emergency Biannual Mass Mail Registration Applications Mailing Requirement Repeal Act of 1978 (D.C. Act 2-234, July 17, 1978, 25 DCR 1467).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1108. Candidates for office — Form, date, and time of day for filing petitions — Number of signatures required — Arrangement of ballot — Nominations for presidential electors — Names of candidates for President and Vice President to appear on ballot under party designation — Form of ballot — Candidates for electors not to appear on ballot — Nominations by nonqualifying political parties — Qualifications of electors — Nomination and election of Delegate, Mayor, Chairman and members of Council — Election of candidates by primary or party runoff election — Nominating petition — Arrangement of names on ballot — Designations of offices of local party committees — Nominating petition for election of members of Board of Education — Posting of petitions in a public place — Challenging validity of petition — Board of Elections and Ethics to determine validity of petition — Appeal — Arrangement of names on ballot.

Section referred to in sections. 1-1116, 1-1117.

NOTES TO DECISIONS

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 448 F. Supp. 1249).

§ 1-1109. Method of voting — Place — Watchers — Challenging of votes — Appeal from challenged ballots — Handicapped and absent voters — Voting in party elections — Election of unopposed candidates — Availability of regulations.

* * * * *

(g) No person shall vote more than once in any election nor shall any person vote in a primary or party election held by a political party other than that to which he or she has declared himself to be a member.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “runoff” in subsection (g).

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1114.

§ 1-1110. Dates for holding elections — Votes cast for President and Vice President to be counted as votes for presidential electors — Voting hours — Method of deciding tie votes — Naming successor to official who dies, resigns, or is unable to serve — Filling vacancies on Board of Education.

* * * * *

(e) Whenever a vacancy occurs in the office of member of the Board of Education, such vacancy shall be filled at the next general election which occurs more than one hundred fourteen days after such vacancy occurs. However, the Board of Education shall appoint a person to fill such vacancy until the unexpired term of the vacant office ends or until noon of the thirtieth day after the Board of Elections and Ethics certifies the results of the election of a person to serve the remainder of such unexpired term, whichever occurs first. A person elected to fill a vacancy shall hold office for the duration of the unexpired term of office to which he or she was elected. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor.
(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “the fourth Monday in January next following the date” and inserting in lieu thereof “noon of the thirtieth day after the Board of Elections and Ethics certifies the results” in subsection (e).
Emergency Act Amendment.
1979 — For temporary amendment of subsection (e), see

sec. 2 of the Emergency Board of Education Vacancy Election Act of 1979 (D.C. Act 3-5, Feb. 15, 1979, 25 DCR 8030).
Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in sections. 1-194, 1-1117, 31-101.

§ 1-1111. Petition for recount by candidate — Procedure — Expenses — Petition for recount by voter to District of Columbia Court of Appeals — Grounds for voiding election.

* * * * *

(b) Within seven days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review such election. In response to such a petition, the court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a). The court shall void an election only for fraud, mistake, the making of expenditures by a candidate, or the willful receipt of contributions in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1121 et seq.), or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such court shall be final and not appealable.
(As amended Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “in violation of this chapter” and inserting in lieu thereof “or the willful receipt of contributions in violation of the District of Columbia

Campaign Finance Reform and Conflict of Interest Act,” in subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1112. Interference with registration and voting.

Section referred to in section. 1-1114.

§ 1-1113. Appropriations.

Section referred to in section. 1-1114.

§ 1-1114. False registration, fraud, and other corrupt practices in elections — Penalties.

(a) Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his or her qualifications for voting or for holding elective office, or be guilty of violating section 1-1109, 1-1112, or 1-1113, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he or she has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1121 et seq.), shall upon conviction thereof be fined not more than \$10,000 or be imprisoned not more than five years, or both.

(b) (1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than one (1) year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of section 1-1116 or 1-1117, shall be fined not more than \$10,000 or be imprisoned not more than one (1) year, or both.

(3) Any person who:

(A) for any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum or recall petition; or

(B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, or to circulate or solicit, to procure or not to procure, or to obtain or not to obtain, signatures upon any initiative, referendum or recall petition, or to vote for or against, or to abstain from voting on, any initiative, referendum or recall measure; or

(C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum or recall measure; or

(D) makes any false statement to the Board of Elections and Ethics concerning any initiative, referendum or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than one (1) year, or both.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, Pub. L. 91-405, title II, § 205(k), 84 Stat. 854; Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 2(b), 25 DCR 9454.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “in violation of this chapter” and inserting in lieu thereof “in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act.”

1979 — Act June 7, 1979, D.C. Law 3-1, amended section by designating the formerly undesignated language as

subsection (a), by deleting the former last sentence in subsection (a) and by adding subsections (b) and (c).

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1115. Candidacy for more than one office not permitted — Choice of nominations — Withdrawal from multiple nominations — Candidacy of officeholder for other office restricted.

(a) No person shall be a candidate for more than one office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or Mayor, and no person shall be a candidate for more than one office on the Council or for the Mayor in any primary election. If a person is nominated for more than one such office, he or she shall, within three days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such three-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of paragraph (a), a person holding the office of Mayor, Delegate, Chairman or Member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board of Elections and Ethics certifies said person's election, pursuant to subsection (a) (10) of section 1-1105, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected. (Aug. 12, 1955, ch. 862, § 15, as added Apr. 22, 1968, Pub. L. 90-292, § 4(9), 82 Stat. 106, and amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(9), (10), 87 Stat. 835; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by rewording the first sentence of subsection (a) to

add "Mayor" and by amending subsection (b) generally.

Legislative History of Law 2-101. See note to § 1-1101.

NOTES TO DECISIONS

Subsection (b) as it read before 1978 amendment was unconstitutional under the First and Fifth Amendments insofar as it required an elected official in the District to leave office prior to qualifying as an eligible candidate for election to a noncoterminous office. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

But validity of remaining election law not affected. — The unconstitutionality of the former subsection (b) did not affect the validity of the remaining provisions of the election law. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Constitutional rights of office-seekers. — The fact that the offices affected by this section were only recently made elective does not diminish the constitutional rights associated with seeking those offices, for although Congress was not constitutionally required to grant self-government to the District, having done so it could not impose unconstitutional conditions or unnecessarily

burden the First Amendment rights inherent in democratic self-government. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Campaigning prior to the nomination deadline is not prohibited by this section. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Simultaneous candidacies for mayoralty and Council seat formerly permissible. — This section before the 1978 amendment prohibited simultaneous candidacies for more than one office on the Board of Education or the Council but did not bar one from seeking both the mayoralty and a Council seat in the same election. *Barry v. District of Columbia Bd. of Elections & Ethics* (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

Cited in *Barry v. District of Columbia Bd. of Elections & Ethics* (1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

§ 1-1116. Initiative and referendum process.

(a) (1) Any registered qualified elector, or electors of the District of Columbia, who desire to submit a proposed initiative measure to the electors of the District of Columbia, or who desire to order that a referendum be held on any act, or on some part or parts of an act, that has

completed the course of the legislative process within the District of Columbia government in accordance with section 1-144(e), shall file with the Board of Elections and Ethics five (5) printed or typewritten copies of the full text of the measure, a summary statement of not more than one hundred (100) words, and a short title of the measure to be proposed in an initiative, or of the act or part thereof on which a referendum is desired.

(2) The proposed initiative measure, or the act or part thereof, on which a referendum is desired shall be accompanied by:

(A) the name and address of the proposer; and

(B) an affidavit that the proposer is a registered qualified elector of the District of Columbia.

(b) Upon receipt of each proposed initiative or referendum measure, the Board of Elections and Ethics shall assign a serial number to each initiative and referendum measure, using separate series of numbers for initiative and separate series of numbers for referendum measures. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No. ____" or "Referendum Measure No. ____".

(c) Within fifteen (15) calendar days after the receipt of an initiative or referendum measure by the Board of Elections and Ethics, the Board shall:

(1) prepare a true and impartial summary statement, not to exceed one hundred (100) words, bearing the serial number of the measure, and expressing the purpose of the measure. Such statement shall not intentionally create prejudice for or against the measure; and

(2) prepare a short title for the measure consisting of not more than fifteen (15) words to permit the voters to identify readily the initiative or referendum measure and to distinguish it from other measures which may appear on the ballot; and

(3) prepare, in the proper legislative form, the proposed initiative or referendum measure, where applicable, reflecting the true intent and meaning of the measure, similar to the form which an act that has completed the course of the legislative process within the District of Columbia government must take before transmittal to Congress pursuant to section 1-147 (c).

(d) After its preparation of the summary statement, short title and legislative form, the Board shall, within five (5) days, notify the person or organization proposing the measure by certified mail of the exact language thereof.

(e) (1) If the proposer objects to the summary statement, short title or legislative form of the initiative or referendum measure formulated by the Board of Elections and Ethics pursuant to subsection (c) of this section, that person may seek review in the Superior Court of the District of Columbia within ten (10) calendar days from the date such person receives such summary statement, short title and legislative form stating his or her objections and requesting appropriate changes. The Superior Court shall expedite the consideration of the matter.

(2) Should no review in the Superior Court of the District of Columbia be sought as provided in paragraph (1) of this subsection, the proposed summary statement, short title and legislative form shall be deemed to be accepted.

(3) Should the Superior Court hold in favor of the proposer, it shall award court costs and reasonable attorneys fees to the proposer.

(f) When the summary statement, short title and legislative form of an initiative or referendum measure has been established pursuant to subsection (e) of this section, the Board of Elections and Ethics shall certify such and transmit a copy thereof by certified mail to the proposer. Thereafter, such short title shall be the title of the measure in all petitions, ballots and other proceedings relating thereto. The Board of Elections and Ethics shall, upon the request of any person, also make copies of the approved short title, summary statement and full legislative text available, at nominal cost.

(g) Upon final establishment of the summary, short title and legislative form of an initiative or referendum proposal, the proposer shall print blank petition sheets in a form prescribed by the Board of Elections and Ethics. Each petition sheet shall be printed on paper of good writing quality of a size acceptable to the Board with a margin of one and three quarters inches at the top to allow for binding in an adequate type face. Each petition sheet at the time of circulating, signing and filing with the Board, shall consist of one (1) sheet providing numbered lines for

twenty (20) names and signatures with residence addresses (street numbers) and ward numbers, and shall have printed on it, in a manner prescribed by the Board, the following:

(1) a warning statement declaring that only qualified registered electors of the District of Columbia may sign the petition; and

(2) a statement requesting that the Board hold an election on the initiative or referendum measure contained therein, stating the measure's serial number and short title; and

(3) the text of the official summary and short title of the measure printed on the front of the petition sheet.

(h) (1) Before circulating the petition, the proposer shall submit the petition to the Board of Elections and Ethics, for verification that the form of the petition is in compliance with the provisions of this subsection. The Board shall inform the proposer of its findings within five (5) working days and shall at this time state the specific modifications, if any, needed in the form for compliance.

(2) Each petition sheet or sheets for an initiative or referendum measure shall have attached to it, at the time of submission to the Board of Elections and Ethics, a statement made under penalties of perjury, in a form determined by the Board signed by the circulator of that petition which contains the following:

(A) the printed name of the circulator;

(B) the residence address of the circulator, giving the street and number;

(C) that the circulator of the petition form was in the presence of each person when the appended signature was written;

(D) that according to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be;

(E) that the circulator of such initiative or referendum petition sheet is a qualified registered elector of the District of Columbia; and

(F) the dates between which the signatures to the petition were obtained.

(i) In order for any initiative or referendum measure to qualify for the ballot for consideration by the electors of the District of Columbia, the proposer of such an initiative or referendum measure shall secure the valid signatures of registered qualified electors upon the initiative or referendum measure equal in number to five (5) percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include five (5) percent of the registered electors in each of five (5) or more of the eight (8) wards. The number of registered electors which is used for computing these requirements shall be consistent with the latest official count of registered electors made by the Board of Elections and Ethics thirty (30) days prior to the initial submission to the Board of the initiative or referendum measure, pursuant to subsection (a) of this section.

(j) (1) A proposer of an initiative measure shall have one hundred and eighty (180) calendar days, beginning on the date which the Board of Elections and Ethics certifies, according to subsection (h) of this section, that such initiative measure is in its final form, to secure the proper number of valid signatures needed on the initiative petition to qualify such a measure for the ballot, pursuant to subsection (i) of this section and to file such petition with the Board.

(2) A proposer of a referendum measure shall secure the proper number of valid signatures needed on the referendum petition to qualify such a measure for the ballot pursuant to subsection (i) of this section, and shall file such petition with the Board before the act or part thereof, which is the subject of the referendum, has become law according to the provisions of sections 1-144 and 1-147(c). No act is subject to referendum if it has taken effect according to the provisions of section 1-147(c).

(3) The proposer may not begin circulating an initiative or referendum petition until the Board has certified pursuant to subsection (f) of this section that such petition is in its final form.

(k) Upon submission of an initiative or referendum petition by the proposer to the Board of Elections and Ethics, the Board shall refuse to accept the petition if the Board finds that the measure presented is not a proper subject for initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, as amended, or upon any of the following grounds:

(1) the verified statement of contributions has not been filed pursuant to sections 1-1134 and 1-1136; or

(2) the petition is not in the proper form established in subsection (g) of this section; or

(3) the time limitation established in subsection (j) of this section within which the petition may be circulated and submitted to the Board has expired; or

(4) the petition on its face clearly bears an insufficient number of signatures; or

(5) the petition sheets do not have attached to them the statements of the circulators as provided in subsection (h) of this section; or

(6) the petition authorizes, or would have the effect of authorizing, discrimination prohibited under the Human Rights Act of 1977 (D.C. Code, sec. 6-2201 et seq.); or

(7) the petition presented would negate or limit an act of the Council of the District of Columbia pursuant to section 47-224.

In the case of refusal to accept a petition, the Board shall endorse on the petition the words submitted but not accepted and the date, and retain the petition pending appeal. If none of the grounds for refusal exists, the Board shall accept the petition.

(l) If the Board of Elections and Ethics refuses to accept an initiative or referendum petition when submitted to it, the person or persons submitting such petition may apply, within ten (10) days after the Board's refusal to accept such petition, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such petition. The Superior Court shall expedite the consideration of the matter. If the Superior Court determines that the issue presented by the petition is a proper subject for initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, as amended, and that the petition is legal in form and apparently meets the requirement for signatures, both as to number and as to ward distribution, prescribed in subsection (i) of this section, and was submitted within the time limitations established in subsection (j) of this section, and has attached to the petition the proper statements of the circulators prescribed in subsection (h) of this section, and does not authorize discrimination as prescribed in subsection (k) (6) of this section and would not negate or limit an act of the Council of the District of Columbia as prescribed in subsection (k) (7) of this section, it shall issue an order requiring the Board to accept the petition as of the date of submission for filing. Should the Superior Court hold in favor of the proposer, it shall award court costs and reasonable attorney's fees to the proposer.

(m) Upon submission of a referendum petition to the Board of Elections and Ethics, the Board shall notify the appropriate custodian of the act of the Council of the District of Columbia which is the subject of the referendum (either the President of the Senate and the Speaker of the House of Representatives) as provided in sections 1-144 and 47-224 and the President of the Senate and the Speaker of the House of Representatives shall, as appropriate, return such act or part or parts of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act until after a referendum election is held. If, however, after the counting and validation procedure for signatures, which takes place pursuant to subsection (o) of this section, the referendum measure fails to meet the percentage and distribution requirements for signatures established in subsection (i) of this section, the act which was the subject of the referendum shall be again transmitted to the Congress for review as provided in section 1-147(c).

(n) When the Board of Elections and Ethics accepts an initiative or referendum petition, whether in the normal course or at the direction of a court, the Board may detach, in the presence of the person submitting the petition or his or her designated representative, if he or she desires to be present, the sheets containing the signatures, and cause all of them to be firmly attached to one (1) or more printed copies of the proposed initiative or referendum measure in such books or volumes as will be most convenient for counting, canvassing, and validating names and signatures.

(o) After acceptance of an initiative or referendum petition, the Board of Elections and Ethics shall certify, within thirty (30) calendar days after such petition has been accepted, whether or not the number of valid signatures on the initiative or referendum petition meets the qualifying

percentage and ward distribution requirements established in subsection (i) of this section, and whether or not the necessary number of names and signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appear on the initiative or referendum petition. This certification may be by a bona fide random and statistical sampling method. If the Board finds that the same person has signed a petition for the same initiative or referendum measure more than once, it shall count only one (1) signature of such person. If a person who signs a petition is found to be a qualified registered elector in a ward other than that which was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not an initiative or referendum measure qualifies for the ballot. Two (2) persons representing the proposer(s) may be present during the counting and validation procedures. Should a political committee or committees exist in opposition to a particular proposed initiative or referendum measure, representatives of such committee or committees may be present during the counting and validation procedures. The Board of Elections and Ethics shall post, by making available for public inspection, petitions for initiatives or referenda, or facsimiles thereof, in the office of the Board, for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third day after the petitions are filed. Any qualified elector may, within such ten (10) day period, challenge the validity of any petition, by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in such petition. The provisions of section 1-1108(p)(2) shall be applicable to such challenge. The Board of Elections and Ethics may issue supplemental rules concerning the challenge of such petitions.

- (p) After determining that the number and validity of signatures on the initiative or referendum petition meet the qualification standards established under this section, the Board of Elections and Ethics shall certify the sufficiency of the initiative or referendum petition and shall certify that the initiative or referendum measure will appear on the ballot. The Board shall conduct an election on an initiative measure at the next general, special, or primary election held at least ninety (90) days after the date on which the measure has been certified as qualified to appear on the ballot. The Board shall conduct an election on a referendum measure within one hundred and fourteen (114) days after the date the measure has been certified as qualified to appear on the ballot. In the case of a referendum measure, if a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days after the date the measure has been certified as qualified to appear on the ballot, the Board may present the referendum measure at that election.
- (q) Upon qualification of an initiative or referendum measure, the Board of Elections and Ethics shall place on the ballot the serial number of the initiative or referendum measure and its short title in substantially the following form:

PROPOSED BY INITIATIVE PETITION

Initiative Measure No. _____ entitled (insert the short title of the measure)
FOR Initiative Measure No. _____
AGAINST Initiative Measure No. _____

PROPOSED BY REFERENDUM PETITION

Referendum Measure No. _____ entitled (insert the short title of the measure)
FOR Referendum Measure No. _____
AGAINST Referendum Measure No. _____

- (r) (1) An initiative measure which has been ratified by a majority of the registered qualified electors voting on the measure shall not take effect until the end of the thirty (30) day congressional review period (excluding Saturdays, Sundays and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than three (3) days or an adjournment of more than three (3) days) beginning on the day such measure is transmitted to the Speaker of the House of Representatives and the President of the Senate, and then only if during such thirty (30) day period both Houses of Congress do not adopt a concurrent

resolution disapproving such initiated act. Upon certification by the Board of Elections and Ethics that the initiative measure has been ratified, the Chairman of the Council shall forthwith transmit the measure to the Speaker of the House of Representatives and to the President of the Senate.

(2) If a majority of the registered qualified electors voting in a referendum on an act or part or parts thereof vote to disapprove the act or part or parts thereof, then such action shall be deemed a rejection of the act or part or parts thereof, and no action by the Council of the District of Columbia may be taken on such act or part thereof for three hundred and sixty-five (365) days following the date when the Board of Elections and Ethics certifies the vote concerning the referendum.

(s) If provisions of two (2) or more initiative or referendum measures which have been approved by the registered qualified electors at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail over the conflicting provision of the other measure. (June 7, 1979, D.C. Law 3-1, § 2(c), 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

Section referred to in sections. 1-1114, 1-1119.2, 1-1119.3, 1-1134.

§ 1-1117. Recall process.

(a) The provisions of this section shall govern the recall of all elected officers of the District of Columbia except the Delegate to the Congress from the District of Columbia and Advisory Neighborhood Commissioners of the District of Columbia.

(b) Any registered qualified elector or electors desiring to initiate the recall of an elected officer shall file a notice of intention to recall that officer with the Board of Elections and Ethics, which contains the following information:

(1) the name and title of the elected officer sought to be recalled;

(2) a statement not to exceed two hundred (200) words in length, giving the reasons for the proposed recall;

(3) the name and address of the proposer of the recall; and

(4) an affidavit that each proposer is:

(A) a registered qualified elector in the election ward of the elected officer whose recall is sought, if that officer was elected to represent a ward; or

(B) a registered qualified elector in the District of Columbia, if the officer whose recall is sought was elected at-large.

A separate notice of intention shall be filed for each officer sought to be recalled.

(c) (1) No recall proceedings shall be initiated for an elected officer during the first three hundred and sixty-five (365) days nor during the last three hundred and sixty-five (365) days of his term of office.

(2) The recall process for an elected officer may not be initiated within three hundred and sixty-five (365) days after a recall election has been determined in his or her favor.

(d) (1) The Board of Elections and Ethics shall serve, in person or by certified mail, the notice of intention to recall to the elected officer sought to be recalled within five (5) calendar days.

(2) The elected officer sought to be recalled may file with the Board, within ten (10) calendar days after the filing of the notice of intention to recall, a response of not more than two hundred (200) words, to the statement of the proposer of recall. If an answer is filed, the Board shall serve immediately a copy of that response to the proposer named in the notice of intention on recall.

(3) The statement contained in the notice of intention to recall and the elected officer's response are intended solely for the information of the voters. No insufficiency in form or substance of such statement shall affect the validity of the election proceedings.

(e) (1) Before circulation of the petitions, the proposer shall submit to the Board of Elections and Ethics for verification that the form of the petition is in compliance with the provisions of this subsection. The Board shall inform the proposer of its findings within five (5) working days and shall at this time state the specific modifications needed, if any, in the form for compliance.

(2) Upon filing with the Board of Elections and Ethics of the notice of intention of recall and the elected officer's response, the proposer(s) of the recall shall print petition sheets in a form prescribed by the Board of Elections and Ethics. Each petition sheet shall be printed on paper of good writing quality of a size acceptable to the Board, with a margin of one and three quarters inches at the top to allow for binding in an adequate type face. Each recall petition sheet shall consist of, at the time of circulating, signing, and filing with the Board, one (1) sheet providing numbered lines for twenty (20) names and signatures with residence addresses (street numbers), and ward numbers and shall have printed on it in a manner prescribed by the Board the following:

(A) a warning statement declaring that only qualified registered electors of the District of Columbia may sign the petition;

(B) the name of the elected officer sought to be recalled and the office which he or she holds;

(C) a statement requesting that the Board hold a recall election in a manner prescribed in amendment number 2 to title IV of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, secs. 1-191 to 1-195);

(D) a copy of the notice of intention to recall, including the statement of the grounds for recall; and

(E) the answer of the officer sought to be recalled, if any. If the officer sought to be recalled has not answered, the petition shall so state.

(f) Each petition sheet or sheets for recall shall have attached to it, at the time of submission to the Board of Elections and Ethics, a statement made under penalties of perjury, in a form determined by the Board signed by the circulator of that petition which contains the following:

(1) the printed name of the circulator;

(2) the residence address of the circulator giving the street and number;

(3) that the circulator of the petition form was in the presence of each person when the appended signature was written;

(4) that according to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be;

(5) that the circulator of the recall petition is a registered elector of the electoral jurisdiction of the officer sought to be recalled;

(6) the dates between which all the signatures to the petition were obtained.

(g) The proposer of a recall shall have one hundred and eighty (180) days, beginning on the date when the elected officer has filed with the Board of Elections and Ethics his or her response to the proposer's notice of intention to recall pursuant to subsection (d) (2) of this section, to circulate the recall petition and file such petition with the Board. If the elected officer sought to be recalled files no response to the notice of intention to recall, the time limitation shall begin on the deadline date for a response established in subsection (d) (2) of this section.

(h) (1) A recall petition for an elected officer from a ward shall include the valid signatures of ten (10) percent of the registered qualified electors of the ward from which the officer was elected. The ten (10) percent shall be computed from the total number of the qualified registered electors from such ward according to the latest official count of the registered qualified electors made by the Board of Elections and Ethics thirty (30) days prior to the date of initial submission to the Board of the notice of intention to recall.

(2) A recall petition for an at-large elected official shall contain the signatures of registered qualified electors in number equal to ten (10) percent of the registered qualified electors in the District of Columbia: Provided, that the total signatures submitted include ten (10) percent of the registered electors in each of five (5) or more of the eight (8) wards. The ten (10) percent shall be computed from the total number of registered qualified electors from the District of Columbia according to the same procedures established in paragraph (1) of this subsection.

(i) Upon the submission of a recall petition by the proposer to the Board of Elections and Ethics, the Board shall refuse to accept the petition upon any of the following grounds:

(1) the financial disclosure statement of the proposer has not been filed pursuant to sections 1-1134 and 1-1136; or

- (2) the petition is not in the proper form established in subsection (e) of this section; or
- (3) the restrictions for initiating the recall process established in subsection (c) of this section were not observed; or
- (4) the time limitation established in subsection (g) of this section within which the recall petition may be circulated and submitted to the Board has expired; or
- (5) the petition clearly bears on its face an insufficient number of signatures to qualify for the ballot; or
- (6) the petition sheets do not have attached to them the statements of the circulators as provided in subsection (f) of this section.

In the case of refusal to accept a petition, the Board shall endorse on the petition the words “submitted but not accepted” and the date, and retain the petition pending appeal. If none of the grounds for refusal exists, the Board shall accept the petition.

(j) (1) If the Board of Elections and Ethics refuses to accept the recall petition when submitted to it, the proposer submitting such petition to the Board may appeal, within ten (10) days after the Board’s refusal, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such recall petition. The Superior Court shall expedite the consideration of the matter. If the Superior Court determines that the petition is legal in form and apparently meets the requirements established under this section, it shall issue an order requiring the Board to accept the petition as of the date of submission. The decision of the Superior Court shall be final.

(2) Should the Superior Court hold in favor of the proposer, it shall award court costs and reasonable attorney’s fees to the proposer.

(k) (1) After the acceptance of a recall petition, the Board of Elections and Ethics shall certify, within thirty (30) calendar days after such petition has been filed, whether or not the number of valid signatures on the recall petition meets the qualifying percentage and ward distribution requirements established in subsection (h) of this section and whether or not the necessary number of signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appears on the petition. In a case in which an officer elected from a ward is sought to be recalled, if a person who signs a recall petition for that elected officer is found not to be a registered qualified elector in the ward indicated on the petition, that name and signature shall not be counted toward determining whether or not the recall measure qualifies. In a case in which an officer elected at-large is sought to be recalled, if a person who signs a recall petition for that elected officer is found to be a registered qualified elector in a ward other than what was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not a recall measure for an at-large elected officer qualifies. If the Board finds that the same person has signed a petition for the same recall measure more than once, it shall count only one (1) signature of such person. Two (2) persons representing the petitioner(s) seeking the recall and two (2) persons representing the elected officer sought to be recalled may be present to observe during the counting and validating procedure.

(2) The Board of Elections and Ethics shall post, within three (3) calendar days after accepting a recall petition, whether in the normal course or at the direction of a court, by making available for public inspection in the office of the Board, the petition for such recall measure or facsimiles thereof. Any registered qualified elector, during a ten (10) day period (including Saturdays, Sundays, and holidays), beginning on the day the recall petition was posted by the Board, may challenge the validity of such a petition by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in such petition. The provisions of section 1-1108(p)(2) shall be applicable to such challenge and the Board may establish any necessary rules and regulations consistent therewith concerning the process of such challenge.

(l) After determining that the number and validity of signatures in the recall petition meet the requirements established in this section, the Board of Elections and Ethics shall certify the sufficiency of such recall petition and shall fix the date of a special election to determine whether the elected officer who is the subject of the recall shall be removed from his or her office. The Board shall conduct an election for this purpose within one hundred and fourteen (114) days after

the date the petition to recall has been certified as to its sufficiency. If a previously scheduled general, primary, or special election will occur between fifty-four (54) and one hundred and fourteen (114) days after the date the petition to recall has been certified as to its sufficiency, the Board may present the recall measure at that election. In the case of a proposed recall of an officer elected to represent a particular ward, the recall election shall be conducted only in that ward.

(m) The Board of Elections and Ethics shall place the recall measure on the ballot in substantially the following form:

FOR the recall of (insert the name of the elected officer and the office held)
AGAINST the recall of (insert the name of the elected officer and the office held)

(n) Based on the results of the special election held to decide the outcome of the recall measure, the elected officer sought to be recalled shall be removed from that office: Provided, that a majority of the qualified electors voting in the recall election vote to remove him or her. The vacancy created by such a removal shall be filled in the same manner as other vacancies, as provided in sections 1-144(d) and 1-161(c)(2) and section 1-1110, as amended. (June 7, 1979, D.C. Law 3-1, § 2(d), 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.
Section referred to in sections. 1-1114, 1-1119.3, 1-1134.

§ 1-1118. Timeliness of action.

For purposes of this or any other chapter administered by the Board of Elections and Ethics, if the final date for any action falls on a Saturday, Sunday, or legal holiday, such action shall be considered timely if taken on the next regular business day immediately thereafter. (June 7, 1979, D.C. Law 3-1, § 6, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1119. Severability.

If any provision of this chapter or any section, sentence, clause, phrase or word or the application thereof, shall in any circumstances be held invalid, the validity of the remainder of the chapter and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (June 7, 1979, D.C. Law 3-1, § 7, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1119.1. Issuance of rules and regulations.

The Board of Elections and Ethics shall issue rules and regulations to effect the provisions of this chapter, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) as amended. (June 7, 1979, D.C. Law 3-1, § 8, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1119.2. Applicability to petitions with signatures obtained on or after October 1, 1978, and before June 7, 1979.

With respect to any initiative petition circulated on or after October 1, 1978, and before June 7, 1979, that is presented to or offered for filing to the Board of Elections and Ethics, section 1-1116 shall apply: Except, that:

(a) the provisions of subsections (h) (1), (j) (1), (j) (3), (k) (2) and (k) (3) shall not be applied in the case of such petition;

(b) subsection (b) shall not apply to the extent that it would require the assignment and use of a serial number prior to the circulation and filing of such petition;

(c) subsections (c) through (f) shall not apply to the extent that they would require the approval of a summary statement, short title, and legislative form for an initiative measure prior to the circulation and filing of such petitions; and

(d) subsection (g) shall not apply to such petition: Provided, however, that each sheet of the petition shall include a statement declaring that each person signing must be or is a registered voter in the District of Columbia.

(June 7, 1979, D.C. Law 3-1, § 9, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1119.3. Effective date.

This chapter shall take effect at the end of the thirty (30) day period provided for the Congressional review of acts of the Council of the District of Columbia in section 1-147 (c) (1): Provided, however, that no initiative, referendum or recall measure may be initiated as provided in sections 1-1116 and 1-1117 until on or after October 1, 1978. (June 7, 1979, D.C. Law 3-1, § 10, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

CHAPTER 11A.—ELECTION CAMPAIGNS— LOBBYING—CONFLICT OF INTEREST

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Subchapter I.—General Provisions

§ 1-1121. Definitions.

When used in this chapter, unless otherwise provided—

(a) The term "election" means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office or for the purpose of deciding an initiative, referendum or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

* * * * *

(f) The term “contribution” means—

(1) a gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee, or the campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum or recall measure;

* * * * *

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate’s campaign without charge, or at a rate which is less than the rate normally charged for such services.

Notwithstanding the foregoing, such term shall not be construed to include (A) services provided without compensation, by individuals (including accountants and attorneys) volunteering a portion or all of their time on behalf of a candidate or political committee, (B) personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee, (C) communications by an organization, other than a political party, solely to its members and their families on any subject, (D) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office, (E) normal billing credit for a period not exceeding thirty days, (F) services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of qualified electors for public office, prior to such qualified elector’s becoming a candidate as provided in this chapter, (G) the use of real or personal property, and the costs of invitations, food and beverages voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual’s residential premises for related activities, or (H) the sale of any food or beverage by a vendor for use in a candidate’s campaign at a charge less than the normal comparable charge if such charge for use in a candidate’s campaign is at least equal to the cost of such food or beverage to the vendor; to the extent that the provisions of (G) and (H) do not exceed \$500 each with respect to any candidate’s election.

(g) The term “expenditure” means—

(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the election campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum or recall petition, or to bring about the ratification or defeat of any initiative, referendum or recall measure;

* * * * *

(4) notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in the course of volunteering their time on behalf of a candidate or political committee or the use of real or personal property and the cost of any food or beverage voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual’s residential premises for candidate related activity if the cumulative value of such activities by such individual on behalf of any candidate do not exceed \$500 with respect to any election.

(h) The term “person” means an individual, partnership, committee, corporation, labor organization, and any other organization.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3 (a), 25 DCR 9454.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “runoff,” in subsection (a), by amending paragraphs (1) and (4) of subsection (f) generally, by adding the clause at the end of paragraph (4) of subsection (g) and by striking “association,” in subsection (h).

1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting “or for the purpose of deciding an initiative, referendum or recall measure” in subsection (a), by adding “or the campaign, or any operations of a political committee involved in such a campaign, to obtain

signatures on any initiative, referendum or recall measure” at the end of paragraph (1) of subsection (f), and by adding “or the election campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum or recall petition, or to bring about the ratification or defeat of any initiative, referendum or recall measure” at the end of paragraph (1) of subsection (g).

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 3-1. See note to § 1-1102.

Section referred to in sections. 1-1102, 1-1111, 1-1171.

Subchapter II.—Financial Disclosures

§ 1-1133. Designation of campaign depositories.

(a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under section 1-1134 or 1-1135, one or more national banks located in the District of Columbia as the campaign depository or depositories of that political committee or candidate. Each such committee or candidate shall maintain a checking account or accounts at such depository or depositories and shall deposit any contributions received by the committee or candidate into that account or accounts. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b).

(b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account or accounts maintained at a campaign depository of such political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 203, 88 Stat. 451; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “national bank” and inserting “one or more national banks” in subsection (a), by inserting “or depositories” immediately following the word “depository” throughout subsection (a), by inserting “or accounts” immediately following the word “account”

throughout subsection (a) and by striking “maintained at the campaign depository of such political committee or candidate” and inserting in lieu thereof “or accounts maintained at a campaign depository of such political committee or candidate” in subsection (b).

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1134. Registration of political committees — Statements.

* * * * *

(b) The statement of organization shall include—

* * * * *

(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party; or, if the committee is supporting or opposing any initiative or referendum, the summary statement and short title thereof,

prepared in accordance with section 1-1116; or, if the committee is supporting or opposing any recall measure, the name and office of the public official whose recall is sought or opposed in accordance with section 1-1117;

* * * * *

(9) the name and address of the bank or banks designated by the committee as the campaign depository or depositories, together with the title and number of each account and safety deposit box used by that committee at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3 (b), 25 DCR 9454.)

Effect of Amendments.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by inserting “or banks” immediately following the word “bank” and by inserting “or depositories” immediately following the word “depository” throughout paragraph (9) of subsection (b).
1979 — Act June 7, 1979, D.C. Law 3-1, amended section by adding “or, if the committee is supporting or opposing any initiative or referendum, the summary statement and short title thereof, prepared in accordance with section

1-1116; or, if the committee is supporting or opposing any recall measure, the name and office of the public official whose recall is sought or opposed in accordance with section 1-1117” at the end of paragraph (6) of subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.
Legislative History of Law 3-1. See note to § 1-1102.
Section referred to in sections. 1-1116, 1-1117, 1-1133.

§ 1-1135. Registration of candidates.

* * * * *

(b) In addition, candidates shall provide the Director the name and address of the campaign depository or depositories designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by inserting “or depositories” immediately following the word “depository” throughout subsection (b).

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1133.

§ 1-1136. Reports by political committees and candidates.

(a) The treasurer of each political committee supporting a candidate, the treasurer of each political committee engaged in obtaining signatures on any initiative, referendum or recall petition, or engaged in promoting or opposing the ratification of any initiative, referendum or recall measure placed before the electors of the District of Columbia, and each candidate, required to register under this chapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director. Except for the first such report which shall be filed on the twenty-first day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the eighth day next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than five days

before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within twenty-four hours after its receipt.

* * * * *

- (d) Repealed. Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.
- (e) In the case of reports filed by a committee or committees on behalf of initiative, referendum or recall measures under this section, such reports shall be filed on such dates as the Board may by rule prescribe, but in no event, shall more than four (4) separate reports be required during the consideration of a particular initiative, referendum or recall measure by any political committee or committees collecting signatures, or supporting or opposing such measures.
- (As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3 (c), 25 DCR 9454.)

Effect of Amendments.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “fifteenth and fifth days” and inserting in lieu thereof “eighth day” in subsection (a) and by repealing subsection (d).
1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting “the treasurer of each political committee engaged in obtaining signatures on any initiative, referendum or recall petition, or engaged in promoting or

opposing the ratification of any initiative, referendum or recall measure placed before the electors of the District of Columbia” in the first sentence of subsection (a) and by adding subsection (e).
Legislative History of Law 2-101. See note to § 1-1101.
Legislative History of Law 3-1. See note to § 1-1102.
Section referred to in sections. 1-1116, 1-1117.

§ 1-1138. Formal requirements respecting reports and statements.

- (a) A report or statement required by this subchapter to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “, taken before any officer authorized to administer oaths” in subsection (a).

Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1140. Identification of campaign literature.

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum or recall petitions, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum or recall measure, shall be identified by the words “paid for by” followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears. (Aug. 14, 1974, Pub. L. 93-376, title II, § 210, 88 Stat. 454; June 7, 1979, D.C. Law 3-1, § 3 (d), 25 DCR 9454.)

Effect of Amendment.
1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting “initiative, referendum or recall petitions” near the beginning of the section and “or for the support

or defeat of any initiative, referendum or recall measure” near the middle of the section.
Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1141. Effect on liability.

No provision of this chapter shall be construed as creating liability on the part of any candidate for any financial obligation incurred by a political committee. For the purposes of this chapter, and section 1-1101 et seq., actions of an agent acting for a candidate shall be imputed to the candidate: Provided, however, that the actions of such agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of this chapter or section 1-1101 et seq., unless the agency relationship to engage in such an act is shown by clear and convincing evidence. (Aug. 14, 1974, Pub. L. 93-376, title II, § 211, 88 Stat. 454; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section generally.

Legislative History of Law 2-101. See note to § 1-1101.

*Subchapter III.—Director of Campaign Finance***§ 1-1151. Establishment of the office of Director.**

(a) There is established within the District of Columbia Board of Elections and Ethics the Office of Director of Campaign Finance (hereinafter in this chapter referred to as the “Director”). The Commissioner of the District of Columbia shall appoint, by and with the advice and consent of the Senate, the Director, except that on and after January 2, 1975, appointments to the Office of Director, including vacancies therein, shall be made by the Mayor, with the advice and consent of the Council. The Director shall serve for a term of four years, subject to removal for cause by the Commissioner or the Mayor, as the case may be, and may be reappointed for a like term or terms, with the advice and consent of the Council, except that in the case of the Director serving as such on January 1, 1975, such Director’s term shall terminate upon the expiration of June 1, 1979, unless sooner so removed for cause. Any appointment to fill a vacancy in the Office of Director shall be for the unexpired portion of the term. The Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code, or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1, and shall be responsible for the administrative operations of the Board pertaining to this chapter and shall perform such other duties as may be delegated or assigned to him from time to time by regulations or orders of the Board. However, the Board shall not delegate to the Director the making of regulations regarding elections.

(b) The Board may appoint a General Counsel to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him from time to time by regulation or order of the Board.

(c) Where the Board, following the presentation by the Director of evidence constituting an apparent violation of this chapter, makes a finding of an apparent violation of this chapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this chapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this chapter. The Director shall have no authority concerning the enforcement of provisions of section 1-1101 et seq., and recommendations of criminal or civil, or both, violations under section 1-1101 et seq. shall be presented by the General Counsel to the Board in accordance with the rules and regulations of general application adopted by the Board in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). Upon the

direction of the Board, the Director may be called upon to investigate allegations of violations of the elections laws in accord with the provisions of this subsection. (Aug. 14, 1974, Pub. L. 93-376, title III, § 301, 88 Stat. 454; Jan. 3, 1975, Pub. L. 93-635, § 12, 88 Stat. 2177; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740.)

Effect of Amendments.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsection (c) generally.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former fifth sentence and by inserting “or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1” in the present fifth sentence of subsection (a), and by deleting “without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service” following “General Counsel” in the first sentence of subsection (b).
Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 2-139. See note to § 1-331.1.
Succession in Government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.
Section referred to in sections. 1-334.6, 1-366.1, 1-1152.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1152. Powers of the Director.

(a) The Director, under regulations of general applicability approved by the Board, shall have the power—

* * * * *

- (5) to pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;
- (6) to accept gifts;
- (7) to institute or conduct, on his or her own motion, an informal hearing on alleged violations of the reporting requirements contained in this chapter. Where the Director, in his or her discretion, determines that such violation has occurred, the Director may issue an order to the offending party or parties to cease and desist such violations within the five (5) day period immediately following the issuance of such order. Should the offending party or parties fail to comply with said order, the Director shall present evidence of such failure to the Board. Following the presentation of said evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of section 1-1151(c) or may dismiss the action.

* * * * *

(c) All investigations of alleged violations of this chapter shall be made by the Director in his or her discretion, in accordance with procedures of general applicability issued by the Director in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). All allegations of violations of this chapter which shall be presented to the Board in writing, shall be transmitted to the Director without action by the Board. In a reasonable time, the Director shall cause evidence concerning the alleged violation of this chapter to be presented to the Board, if he or she believes that sufficient evidence exists constituting an apparent violation of this chapter. Following the presentation of such evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of section 1-1151(c), or may dismiss the action. In no case may the Board refer information concerning an alleged violation of this chapter to the United States Attorney for the District of Columbia without the presentation herein provided by the Director. Should the Director fail to present a matter or advise the Board that insufficient evidence exists to present such a matter, or that an additional period of time is needed to investigate the matter further, within ninety (90) days of its receipt by the Board or the Director, the Board may order the Director to present the matter as herein provided. The provisions of this subsection shall in no manner limit the authority of the United States Attorney for the District of Columbia.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by deleting “and” at the end of paragraph (5) of subsection (a), deleting “.” at the end of paragraph (6) of subsection (a) and inserting a semicolon in lieu thereof and

by adding a new paragraph (7) to subsection (a) and by adding a new subsection (c).
Legislative History of Law 2-101. See note to § 1-1101.

§ 1-1156. District of Columbia Board of Elections and Ethics.

* * * * *

(b)

* * * * *

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Board may issue a schedule of fines for violations of this chapter, which may be imposed ministerially by the Director. A civil penalty imposed under the authority of this paragraph may be reviewed by the Board in accordance with the provisions of paragraph (2). The aggregate set of penalties imposed under the authority of this paragraph may not exceed \$500.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the Chairman thereof, and thereupon the Board shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law but the Board’s findings of fact, if supported by substantial evidence, shall be conclusive.

(c) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this chapter or any political committee, the Board shall provide within a reasonable period of time an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this chapter or of any provision of chapter 11 of this title over which the Board has primary jurisdiction. The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking such opinion, in the District of Columbia Register within twenty (20) days of its receipt by the Board. Comments upon such requested opinions shall be received by the Board for a period of at least fifteen (15) days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions, following a finding that the issuance of such advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare or morals.

Advisory opinions shall be published in the District of Columbia Register within thirty days of their issuance, provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without their prior consent in writing. When issued according to rules of the Board, an advisory opinion shall be deemed to be an order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby.

(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by redesignating paragraph (3) of subsection (b) as paragraph (4) and inserting a new paragraph (3), by

striking “, through its General Counsel,” and by inserting the additional sentences immediately following the phrase “the Board has primary jurisdiction.” in subsection (c) and by adding the new material at the end of subsection (c).

Legislative History of Law 2-101. See note to § 1-1101.

Section referred to in section. 1-348.3.

NOTES TO DECISIONS

Cited in *Convention Center Referendum Comm. v. Board of Elections & Ethics* (D.C. 1979, 399 A.2d 550).

Subchapter IV.—Finance Limitations

§ 1-1161. General limitations.

(a) Repealed. Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257.

(b) No person shall make any contribution which, and no person shall receive any contribution from any person which when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor or for the recall of the Mayor, \$2,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council or for the recall of the Chairman of the Council, \$1,500;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large or for the recall of an at large Council member, \$1,000;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward or for the recall of an at large Board of Education member or for a Council member elected from a ward, \$400;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for the recall of a member of the Board of Education elected from a ward or for official of a political party, \$200;

(6) in the case of a contribution for the purpose of obtaining signatures on an initiative or referendum petition or for the purpose of promoting or opposing the ratification of an initiative or referendum measure, \$1,000; and

(7) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(c) No person shall make any contribution in any one election for the Mayor, the Chairman of the Council, each member of the Council, and each member of the Board of Education (including primary, general, and special elections as appropriate) which when aggregated with all other contributions made by that individual in that election exceeds \$4,000. No contributions made to support or oppose initiative, referendum or recall measures shall be affected by the provisions of this subsection.

* * * * *

(g) For purposes of the limitations contained in this section all contributions made by any person directly or indirectly to or for the benefit of a particular candidate or to or for any particular political committee formed to advocate the ratification or defeat of any initiative, referendum or recall measure, including contributions which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate or political committee, shall be treated as contributions from that person to that candidate or political committee.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3 (e), 25 DCR 9454.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, repealed subsection (a) and amended subsections (b) and (c) generally.

1979 — Act June 7, 1979, D.C. Law 3-1, amended section, in subsection (b), by inserting “or for the recall of the Mayor” in paragraph (1), “or for the recall of the Chairman of the Council” in paragraph (2), “or for the recall of an at large Council member” in paragraph (3), “or for the recall of an at large Board of Education member or for a Council member elected from a ward” in paragraph (4) and “or for the recall of a member of the Board of Education elected from a ward” in paragraph (5), by deleting “and”

following “\$200” in paragraph (5), by inserting present paragraph (6) and by redesignating former paragraph (6) as present paragraph (7). The act also added the second sentence in subsection (c), and in subsection (g), inserted “or to or for any particular political committee formed to advocate the ratification or defeat of any initiative, referendum or recall measure” and “or political committee” and added “or political committee” at the end of the subsection.

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 3-1. See note to § 1-1102.

Section referred to in sections. 1-1161.1, 1-1176.

§ 1-1161.1. “Person” defined.

For the purpose of section 1-1161 (b), as amended, the term “person” shall include “individual” for all contributions to support or oppose initiative, referendum or recall measures after October 1, 1978. (June 7, 1979, D.C. Law 3-1, § 3, 25 DCR 9454.)

Legislative History of Law 3-1. See note to § 1-1102.

§ 1-1162. Constituent services.

Section referred to in section. 1-1176.

Subchapter V.—Lobbying

§ 1-1171. Definitions.

As used in this subchapter, unless the context requires otherwise —

(a) The term “administrative decision” means any activity directly related to action by an executive agency to issue a Mayor’s Order, to cause to be undertaken a rule making proceeding (which does not include a formal public hearing) under the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), or to propose legislation or make nominations to the Council, the President, or the Congress.

(b) The term “compensation” means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

* * * * *

(c1) The term “expenditure” means any money or an exchange of value regardless of its form.

* * * * *

(f) (1) The term “lobbying” means communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision.

(2) As used in this subchapter, the term “lobbying” shall not include: (A) the appearance or presentation of written testimony by a person in his or her own behalf, or representation by an attorney on behalf of any such person in a rule making (which includes a formal public hearing), rate making, or adjudicatory hearing before an executive agency or the tax assessor; (B) information supplied in response to written inquiries by an executive agency or the Council of the District of Columbia or any public official; (C) inquiries concerning only the status of specific actions by an executive agency or the Council of the District of Columbia; (D) testimony given before a committee of the Council of the District of Columbia or before the Council of the District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record; (E) a communication made through the instrumentality of a newspaper, television or radio of general circulation or a publication whose

primary audience is the organization's membership; and (F) communications by a bona fide political party as defined in section 1-1121 (j).

* * * * *

(h) The term "official in the executive branch" means any public official as defined in section 1-1181 (i) (1) and officers and employees who make field decisions as defined in section 1-1182 (b) (1) who are members, officers, or employees of an executive agency.

(i) The term "official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, and employees appointed under the authority of sections 1-339.1 through 1-339.3 or designated in section 1-339.8.

* * * * *

(k) Repealed. Apr. 23, 1977, D.C. Law 1-126, title III, § 302(i), 23 DCR 2372.

(l) The term "registrant" means a person who is required to register as a lobbyist under the provisions of section 1-1172.

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking the phrase beginning "to promulgate an issuance" and inserting "to cause to be undertaken" in the first sentence of subsection (a), amending subsection (b) generally, adding subsection (c1), adding "or a publication whose primary audience is the organization's membership" in subsection (f) (2) (E), changing "1-1182 (b) (2) (A)" to "1-1182 (b) (1)" in subsection (h), changing "GS-15" to "GS-13" and "1-1182 (b) (2) (A)" to "1-1182 (b) (1)" in subsection (i) and adding subsection (l).

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting "and employees appointed under the authority of sections 1-339.1 through 1-339.3 or designated in section 1-339.8" for "officers and employees who hold an appointment in the General Service schedule

as grade GS-13 or higher, and employees who make field decisions as defined in section 1-1182 (b) (1) who are employed by the Council of the District of Columbia" in subsection (i).

Emergency Act Amendment.

1979 — For temporary amendment of subsections (h) and (i), see sec. 2 of the Public Officials' Disclosure Emergency Amendments of 1979 (D.C. Act 3-137, Dec. 15, 1979, 26 DCR 2850).

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1172. Persons required to register.

Except as provided in section 1-1173, a person shall register with the Director pursuant to section 1-1174 if such person receives compensation or expends funds in an amount of \$250 or more in any three consecutive calendar month period for lobbying. A person who receives compensation from more than one source shall register under this section if such person receives an aggregate amount of \$250 or more in any three consecutive calendar month period for lobbying. (Aug. 14, 1974, Pub. L. 93-376, title V, § 502, 88 Stat. 462; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section generally.

Legislative History of Law 2-101. See note to § 1-1101.

Section referred to in section. 1-1171.

§ 1-1173. Exceptions.

A person need not register with the Director pursuant to section 1-1174 if such person is —

* * * * *

(d) any entity specified in section 47-1554 (d), no activities of which include lobbying, the result of which shall inure to the financial gain or benefit of the entity.

Any person who is exempt from registration under any provision of this section, except a person exempt from registration under the provisions of subsection (a) of this section, may be a

registrant for other purposes under this chapter: Provided, however, that no such activity engaged in by such person shall constitute a conflict of interest under the provisions of subchapter VI of this chapter (D.C. Code, sec. 1-1181 et seq.). Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under section 1-1175.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding subsection (d).

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in sections. 1-1172, 1-1176.

§ 1-1174. Registration.

Section referred to in sections. 1-1172, 1-1173.

§ 1-1175. Activity reports.

(a) Each registrant shall file with the Director between the first and tenth day of July and January of each year a report signed under oath concerning his or her lobbying activities during the previous six month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom he or she receives compensation. Such reports shall be public documents and shall be on a form prescribed by the Director and shall include the following:

* * * * *

(E) Each official in the executive or legislative branch with whom the registrant has had written or oral communications (during the reporting period) related to lobbying activities conducted by the registrant shall also be included in such report, identifying the official with whom the communication was made.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “and the nature of the communication” in paragraph (E) of subsection (a).

Legislative History of Law 2-101. See note to § 1-1101.
Section referred to in section. 1-1173.

§ 1-1176. Restricted activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds \$100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized in sections 1-1161 and 1-1162.

* * * * *

(e) No public official shall be employed as a lobbyist while acting as a public official, except as provided in section 1-1173.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

Effect of Amendment.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding the last sentence to subsection (a) and adding the exception at the end of subsection (e).

Legislative History of Law 2-101. See note to § 1-1101.
Compiler’s changes. The word “a” was changed to “as a” in subsection (e).

Subchapter VI.—Conflict of Interest and Disclosure

§ 1-1181. Conflict of interest.

* * * * *

(b) No public official shall use his or her official position or office to obtain financial gain for himself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official (1) on any matter which affects a class of persons (such a class shall include no less than fifty persons) of which such public official is a member if the financial gain to be realized is de minimus; or (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

* * * * *

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(i) As used in this section, the term —
(1) "public official" means (A) the Mayor of the District of Columbia, a member or the Chairman of the Council of the District of Columbia, or a member of the District of Columbia Board of Education; or (B) an officer or employee of the District of Columbia government appointed under the authority of sections 1-339.1 through 1-339.3 or designated in section 1-339.8; (C) a member of the Zoning Commission or the Board of Zoning Adjustment; (D) and each member of a board or commission who makes field decisions as provided in paragraph (1) of subsection (b) of section 1-1182.

* * * * *

(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740.)

Effect of Amendments.
1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsections (b), (h) and (i) generally.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting present subsection (i) (1) (B) for former subsections (i) (1) (B) and (C) and by redesignating former subsections (i) (1) (D) and (E) as present subsections (i) (1) (C) and (D).
Emergency Act Amendment.
1979 — For temporary amendment of section, see sec. 2 of the Public Officials' Disclosure Emergency

Amendments of 1979 (D.C. Act 3-137, Dec. 15, 1979, 26 DCR 2850).
Legislative History of Law 2-101. See note to § 1-1101.
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-366.1, 1-1171, 1-1173, 1-1182.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 1-1182. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, the President and each member of the

Board of Education, and persons appointed under the authority of subchapter X of chapter 3A of this title or sections 1-339.1 through 1-339.3 or designated in section 1-339.8, and each member of a board or commission who makes field decisions as provided in subsection (b) (1) of this section regardless of compensation, shall file annually, with the Board a report containing a full and complete statement of —

(1) the name of each business entity (including sole proprietorships, partnerships and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled) —

(A) has a beneficial interest (including those held in such person's own name, in trust, or in the name of a nominee) exceeding in the aggregate \$1,000: Provided, however, if such interest consists of corporate stocks which are registered and traded upon a recognized national exchange, such aggregate value must exceed \$5000; or

(B) earns income for services rendered during a calendar year in excess of \$1,000; or

(C) serves as an officer, director, partner, employee or in any other fiduciary capacity;

(2) any outstanding individual liability in excess of \$1,000 for borrowing by such person or his or her spouse if such liability is joint, from anyone other than a federal or state insured or regulated financial institution or a member of such person's immediate family;

(3) all real property located in the District of Columbia (and its actual location) in which such person or his or her spouse if such property is jointly titled, has an interest with a fair market value in excess of \$5,000: Provided, however, that this provision shall not apply to personal residences actually occupied by such person or his or her spouse;

(4) all professional or occupational licenses issued by the District of Columbia government held by such person;

(5) all gifts received in an aggregate value of \$100 in a calendar year by such person from any business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies); and

(6) an affidavit stating that the subject candidate or office holder has not caused title to property to be placed in another person or entity for purposes of avoiding the disclosure requirements of this subsection. For the purpose of this subsection, the words "immediate family" shall have the same meaning as in section 1-1181. The Board may by rule, provide forms for the submission of the statement required by this subsection in aggregate categories. Information supplied pursuant to this subsection shall be modified by the filer within thirty (30) days of any changes therein, and failure to inform the Board of such modifications, is deemed to be a willful violation of this filing requirement. The Board may, on a case by case basis, provide for certain exemptions to this filing requirement which are deemed to be de minimus by the Board.

(b) (1) Any District of Columbia government employee who makes decisions in areas of contracting, procurement, administration of grants or subsidies, planning or developing policies, inspecting, licensing, regulating, auditing, or affecting the legislative process, or acting in areas of responsibility involving any potential conflict of interest as the Board may determine, shall also file a Financial Statement as required by this section containing the information specified in subsection (b) of this section, provided, that the Board of Elections and Ethics shall cause to be printed in the District of Columbia Register a list of all positions by job classification involving field decisions, as defined in this section, within one hundred twenty days of the effective date of this act, and that no person shall be required to file under the provisions of this subsection until ninety days after the list has been published in the District of Columbia Register.

(2) An individual or class of individuals may be exempted from the filing requirements of subsection (a) of this section only upon a determination by the Board that the duties of the individual or class of individuals do not involve decisions in areas specified in paragraph (1) of this subsection (b).

(3) Before the first day of February of each year, the chief executive of the Executive Branch of the District of Columbia government, the District of Columbia Court of Appeals, the

District of Columbia Superior Court, the Council of the District of Columbia, the Board of Education, and any independent agency or instrumentality of the District of Columbia shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a Financial Statement as required by this section with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within twenty-one days of such person's appointment, election, resignation, termination, or death.

* * * * *

(d) (1) Reports required by this section (other than reports so required by candidates) shall be filed not later than sixty days following August 14, 1974, and not later than May 15 of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position the occupancy of which imposes upon him the reporting requirements contained in subsection (a) shall file such report on the last day he or she occupies such office or position, or on such later date, not more than three months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the first day of June each year, the names of the candidates, officers, and employees who have filed a report under this section. Any paper which has been filed with the Board for longer than seven years, in accordance with the provisions of this section, shall be returned to the person who filed it or his or her legal representative. In the event of the death or termination of service of the Mayor, Chairman or member of the Council of the District of Columbia, or Chairman or member of the Board of Education of the District of Columbia, or officer or employee of the District of Columbia, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year after such death or termination of service.

(2) Any report required to be filed with the Director from an employee who is no longer covered under the provisions of this chapter on March 1, 1979, shall be returned to such employee or his or her representative on or before June 1, 1979: Provided, however, that should the Director certify that any routine audit or an investigation concerning compliance with the provisions of this chapter is currently underway, such reports shall not be returned to such employees, except as otherwise provided in this section.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended subsections (a), (b) and (d) generally.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting "and persons appointed under the authority of subchapter X of chapter 3A of this title or sections 1-339.1 through 1-339.3 or designated in section 1-339.8" for "and the head of each independent and subordinate agency of the District of Columbia government, and each person paid from funds appropriated to the Office of the Mayor or to the Council of the District of Columbia who occupies a position which is classified as a GS-13 or higher in the General Schedule under section 5332 of Title 5 of the United States Code, and the City Administrator, and the General Counsel to the District of Columbia Board of Elections and Ethics, and the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics, and the People's Counsel of the District of Columbia, and the Auditor of the District of Columbia" in subsection (a), and by substituting

"March 1, 1979" for "September 1, 1978" and "June 1" for "January 1" in paragraph (2) of subsection (d).

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the Full Political Participation Act Emergency Amendments of 1979 (D.C. Act 3-52, June 8, 1979, 25 DCR 10567); sec. 2 of the Full Political Participation Act Second Emergency Amendments of 1979 (D.C. Act 3-92, Aug. 27, 1979, 26 DCR 997); sec. 2 of the Full Political Participation Act Third Emergency Amendments of 1979 (D.C. Act 3-109, Oct. 15, 1979, 26 DCR 1832); and sec. 2 of the Public Officials' Disclosure Emergency Amendments of 1979 (D.C. Act 3-137, Dec. 15, 1979, 26 DCR 2850).

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in sections. 1-348.3, 1-366.1, 1-1171, 1-1181.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter VII.—Miscellaneous Provisions

§ 1-1191. Penalties and enforcement.

* * * * *

(f) All actions of the Board or of the United States Attorney for the District of Columbia to enforce the provisions of this chapter must be initiated within three (3) years of the actual occurrence of the alleged violation of the chapter.
(As amended Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257.)

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| Effect of Amendment. 1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by adding subsection (f). | Legislative History of Law 2-101. See note to § 1-1101. |
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§ 1-1192. Use of surplus campaign funds.

Within the limitations specified in this chapter, any surplus, residual, or unexpended campaign funds received by or on behalf of an individual who seeks nomination for election, or election to office shall be contributed to a political party for political purposes, used to retire the proper debts of his or her political committee which received such funds, or returned to the donors as follows:

- (1) in the case of an individual defeated in an election, within six months following such election;
- (2) in the case of an individual elected to office, within six months following such election; and
- (3) in the case of an individual ceasing to be a candidate, within six months thereafter.

An individual defeated or elected to office as Member of the Board of Education under this chapter, or a political committee formed to collect signatures or advocate the ratification or defeat of any initiative, referendum or recall measure, shall be authorized to transfer any surplus, residue, or unexpended campaign funds to any charitable, scientific, literary, or educational organization or organizations which meet the requirements of section 47-1557b (a) (8); and an individual elected to an office under this chapter and authorized to establish a program of constituent services under section 1-1162 shall be authorized to transfer any surplus, residue, or unexpended campaign funds to his or her program of constituent services. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 703, 88 Stat. 471; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 805, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; June 7, 1979, D.C. Law 3-1, § 3 (f), 25 DCR 9454.)

| | |
|---|--|
| Effect of Amendment. 1979 — Act June 7, 1979, D.C. Law 3-1, amended section by inserting “or a political committee formed to collect signatures or advocate the ratification or defeat of any | initiative, referendum or recall measure” near the beginning of the last sentence. Legislative History of Law 3-1. See note to § 1-1102. |
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CHAPTER 13A.—BUSINESS AND ECONOMIC DEVELOPMENT

Sec.
1-1354. Staffing of Office.

§ 1-1352. Establishment of Office of Business and Economic Development.

Section referred to in section. 1-333.1.

§ 1-1354. Staffing of Office.

(a) The Office shall be headed by an Executive Director (hereinafter in this chapter referred to as the “Director”), who shall be appointed by the Mayor. The Director shall devote his full time to the duties of his Office, and shall appoint qualified staff including a “Business Ombudsman” charged primarily with the implementation of the functions provided in section 1-1353(g). The annual compensation of the Director shall be determined in accordance with chapter 51 of title 5, U.S. Code (relating to the classification of government employees and related matters), but shall be no less than a GS-16, step one or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of this title.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (x), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding “or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of this title” at the end of the last sentence of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1. **Section referred to in section.** 1-366.1. **Cross reference.** For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 14.—NATIONAL CAPITAL REGION TRANSPORTATION

Subchapter V.—Adopted Regional System

Sec.
1-1443. Authorization of District of Columbia contributions.

Subchapter II.—Compact for Mass Transportation

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

NOTES TO DECISIONS

Washington Metropolitan Area Transit Commission is not a federal agency or instrumentality but instead is comparable to a state regulatory agency that satisfies the need to coordinate the regulatory agencies of three political jurisdictions. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

Compact did not affect regulatory authority of F.A.A. — Congress’ consent and approval to this compact and the formation of the Commission did not impinge on the broad power given the Federal Aviation Administration under

the Second Washington Airport Act (§ 7-1401 et seq.). *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

The Federal Aviation Administration’s contractual grant of exclusive rights to a bus company for bus transportation from Dulles International Airport to points in the District of Columbia was valid and enforceable even though it impinged on the regulatory authority of the Commission. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

§ 1-1412. Suspension of certain laws for duration of compact — Reinstatement of laws upon termination of compact — Certain police powers of parties to compact and Director of National Park Service not affected — Franchise rights and obligations of D.C. Transit System, Inc., not impaired — “Public Interest” includes interest of carrier employees — Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force — Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

NOTES TO DECISIONS

Compact did not affect regulatory authority of F.A.A. — Congress’ consent and approval to the compact and the formation of the Washington Metropolitan Area Transit Commission did not impinge on the broad power given the

Federal Aviation Administration under the Second Washington Airport Act (§ 7-1401 et seq.). *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

Subchapter V.—Adopted Regional System

§ 1-1443. Authorization of District of Columbia contributions.

(a) To provide the District of Columbia share of the cost of the Adopted Regional System, the Mayor of the District of Columbia is authorized to contract with the Transit Authority to make annual capital contributions. To carry out the purposes of this section there is authorized to be appropriated out of the general fund of the District of Columbia, without fiscal year limitation, not to exceed such sums as may be necessary.

* * * * *

(d) The Mayor of the District of Columbia is further authorized to contract with the Transit Authority and to pay in accordance with the terms thereof for the service to be provided to the District of Columbia by the Adopted Regional System.
(As amended Aug. 14, 1979, Pub. L. 96-57, 93 Stat. 388.)

Effect of Amendment.
1979 — Act Aug. 14, 1979, Pub. L. 96-57, 93 Stat. 388, amended section, by substituting “Mayor” for “Commissioner” in the first sentence and “such sums as may be necessary” for “not to exceed \$219,700,000” in the

second sentence, and deleting “aggregating not to exceed \$269,700,000” at the end of the first sentence in subsection (a), and by substituting “Mayor” for “Commissioner” in subsection (d).

CHAPTER 15.—ADMINISTRATIVE PROCEDURE

| Subchapter I.—Administrative Procedure | | Sec. |
|--|--|---|
| Sec. | | 1-1535. Permanent supplements to the District of Columbia Municipal Regulations. |
| 1-1504. Official publication. | | 1-1536. Filing future documents with the Administrator. |
| 1-1506. [Repealed.] | | 1-1537. Publication specifications of the District of Columbia Municipal Regulations. |
| Subchapter III.—Legal Publication | | 1-1538. Legal effectiveness of documents. |
| 1-1531. Definitions. | | 1-1539. Errors in publication of documents. |
| 1-1532. Comprehensive compilation of District of Columbia Municipal Regulations. | | 1-1539.1. Certification. |
| 1-1533. District of Columbia Register. | | 1-1539.2. Presumption created by publication. |
| 1-1534. Documents to be filed in the District of Columbia Office of Documents. | | 1-1539.3. Criminal penalties. |

Subchapter I.—Administrative Procedure

§ 1-1501. Other authority.

Section referred to in sections. 1-1152, 1-1171, 2-2504, 4-1102, 6-2301, 32-350, 45-1695, 45-1699.1, 45-1699.21, 47-3328.

NOTES TO DECISIONS

Purpose of chapter. — Congress adopted this chapter to assure a fair and more uniform administrative process for local government agencies. *Citizens Ass’n v. District of Columbia Zoning Comm’n* (D.C. 1979, 402 A.2d 36).

Cited in *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71); *Kenmore Joint Venture v. District of Columbia Bd. of*

Zoning Adjustment (D.C. 1978, 391 A.2d 269); *Lewis v. District of Columbia Comm'n on Licensure to Practice Healing Art* (D.C. 1978, 385 A.2d 1148); *Debruhl v. District*

of Columbia Hackers' License Appeal Bd. (D.C. 1978, 384 A.2d 421); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 1-1502. Definition.

Section referred to in section. 1-1531.

NOTES TO DECISIONS

Meaning of "contested case". — An administrative proceeding is a "contested case" if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties, whereas if the agency is acting in a legislative capacity making policy decisions directed toward the general public, its proceeding is not subject to the procedural requirements for contested cases. *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

Zoning proceeding constituted "rulemaking" rather than a "contested case" where the Zoning Commission rezoned at least 50 lots in six squares and solicited and received testimony regarding the impact of imminent development on the entire vicinity; the fact that the impetus for the hearings came from citizens who were concerned with the impact of a high-rise structure on a particular piece of property was of no consequence in determining whether the proceeding was a contested case. *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

The Zoning Commission properly proceeded by rulemaking rather than by contested cases in preparing new zoning proposals for waterfront area. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Scope of subdivision (8) (B) exclusion. — Subdivision (8) (B) was intended to encompass virtually all personnel decisions. *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703).

Includes intra-agency transfers. — The exclusion under subdivision (8) (B) encompasses personnel decisions transferring employees within an agency. *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703).

And administrative leave. — Administrative leave requests are facets of personnel management encompassed within the term "selection or tenure" under subdivision (8) (B). *Money v. Cullinane* (D.C. 1978, 392 A.2d 998).

The Metropolitan Police Department's determination that police officers were not entitled to administrative leave was a decision of day-to-day government personnel management, which Congress has expressly deemed not a contested case and hence not subject to review by the Court of Appeals. *Money v. Cullinane* (D.C. 1978, 392 A.2d 998).

Cited in *Rorie v. District of Columbia Dep't of Human Resources* (D.C. 1979, 403 A.2d 1148); *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

§ 1-1503. Establishment of general procedures.

NOTES TO DECISIONS

Regulations applicable to related proceedings. — In the absence of regulations directed specifically to hackers' license revocation proceedings, the regulations applicable

to appeals from license denials govern revocation proceedings as well. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

§ 1-1503a. Open meetings and hearings — Transcripts — Availability to the public.

Section referred to in section. 9-602.

§ 1-1504. Official publication.

(a) The Mayor shall cause to be published the official publications known as the District of Columbia Register and the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.

(b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the District of Columbia Register or the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter.

* * * * *

(d) Repealed. Mar. 6, 1979, D.C. Law 2-153, § 6 (a), 25 DCR 6960.

(e) Repealed. Mar. 6, 1979, D.C. Law 2-153, § 6 (a), 25 DCR 6960.

(As amended, Mar. 6, 1979, D.C. Law 2-153, § 6 (a), 25 DCR 6960.)

Effect of Amendment.

1979—Act Mar. 6, 1979, D.C. Law 2-153, amended section by rewriting subsection (a), by substituting “or the District of Columbia Municipal Regulations pursuant to subchapter III of this chapter” for “pursuant to this section” in subsection (b), and by repealing subsections (d) and (e).

Legislative History of Law 2-153. See note to § 1-1611.

Compiler’s note. As amended by D.C. Law 2-153, subsection (a) originally contained the phrase “Subchapter II.” “Subchapter II” was changed to “subchapter III” in subsection (a).

Availability of Official Information for Public Disclosure. The material contained in this note, appearing in the 1973 edition of the D.C. Code, was repealed by D.C. Law 1-96.

§ 1-1505. Public notice and participation in rulemaking.

Section referred to in sections. 1-334.5, 6-525.

NOTES TO DECISIONS

Subsection (a) analogous to federal statute. — The requirements in subsection (a) as to notice and comment are closely analogous to the requirements of the Federal Administrative Procedure Act (5 U.S.C. § 551 et seq.) for an informal rulemaking proceeding. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Post hoc publication of regulations in the District of Columbia Register cannot cause them to acquire validity. *Rorie v. District of Columbia Dep’t of Human Resources* (D.C. 1979, 403 A.2d 1148).

Opportunity to comment and submit data afforded by Zoning Commission. — The requirement under this section and § 5-417 that interested members of the public be afforded a reasonable opportunity to comment and submit data was met by the Zoning Commission’s holding four days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and

developers which occurred after the closing of the record but before issuance of the Commission’s final orders did not violate the requirements of the Administrative Procedure Act (§ 1-1501 et seq.) or of due process. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Rulemaking affords limited procedural protections. — In a rulemaking proceeding, which is quasi-legislative in character, all the restraints of the Administrative Procedure Act (§ 1-1501 et seq.) and the full range of due process protections necessary to an adversary adjudication are not applicable. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

There is no requirement that opponents of a rule be given the opportunity to cross-examine witnesses testifying favorably or to rebut the evidence presented by proponents; rulemakings differ in this regard from contested cases. *Citizens Ass’n v. Zoning Comm’n* (D.C. 1978, 392 A.2d 1027).

Cited in *Schneider v. District of Columbia Zoning Comm’n* (D.C. 1978, 383 A.2d 324).

§ 1-1506. Repealed. Mar. 6, 1979, D.C. Law 2-153, § 6 (b), 25 DCR 6960.

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1509. Contested cases.

Section referred to in sections. 2-499.5, 2-957, 6-528, 6-2303, 47-3215.

NOTES TO DECISIONS

Notice requirement met. — Notice that erroneously described scheduled action as a lot width variance instead of a lot area variance nonetheless gave reasonable notice as required by this section. *Russell v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 402 A.2d 1231).

Nondisclosure of complainant’s identity to taxi driver violated section. — Failure of the Hackers’ License Appeal Board to disclose a complainant’s identity to a driver threatened with license suspension denied him both reasonable notice of the issues to be heard, in violation of subsection (a), and the opportunity to effectively cross-examine, in violation of subsection (b). *Babazadeh v. District of Columbia Hackers’ License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Limited administrative discretion in reviewing special exception applications. — The discretion of the Board of Zoning Adjustment in reviewing special exception applications is limited to determining whether a proposed

exception satisfies the requirements of the regulation under which it is sought, and the burden of so demonstrating rests with the applicant. *Dupont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Legal requirements for factual findings in administrative cases are: (1) The agency must make findings on all contested issues material to the underlying substantive statute or rule; (2) its findings must be supported by substantial evidence apparent from the record as a whole; and (3) the agency’s conclusions of law must be derived rationally from findings that are in accord with the underlying statute. *Spevak v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 549).

Form of factual findings defined. — The Administrative Procedure Act defines the form findings of fact of the Board of Zoning Adjustment must take. *Wolf*

v. District of Columbia Bd. of Zoning Adjustment (D.C. 1979, 397 A.2d 936).

Neither repetition of statutory language nor simple summary of evidence satisfies requirement in subsection (e) that the board's findings "consist of a concise statement of the conclusions upon each contested issue of fact." *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

"Each contested issue of fact" defined. — The provision of this section requiring findings on "each contested issue of fact" refers to issues contested before the agency itself. *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

Substantial evidence as required in subsection (e) means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Heyert v. District of Columbia, ABC Bd.* (D.C. 1979, 399 A.2d 1309); *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

The Board of Zoning Adjustment was required to support its findings with more than a mere scintilla of rationally connected evidentiary support. *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Substantial evidence is more than a mere scintilla. *Heyert v. District of Columbia, ABC Bd.* (D.C. 1979, 399 A.2d 1309).

Inherent in the substantial evidence test are three requirements: (1) There must be findings on each contested issue of fact; (2) the decision must rationally follow from the facts; and (3) there must be sufficient evidence supporting each finding. *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

No explanation required. — An agency is not legally required to explain why it favored one witness or one statistic over another. *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

Findings of Board of Zoning Adjustment comported with subsection (e) where the record revealed adequate Board consideration of an application for a special exception and included facts from which the Board could make a reasonable judgment that the application met the

regulatory prerequisites, even though the applicant itself did almost nothing to demonstrate that the proposed exception satisfied the relevant regulations, and the hearing was little more than a formality. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Requirements of subsection (e) were not met by the Board of Zoning Adjustment where the Board in granting a special exception did not adequately consider the issues of traffic, impact on neighborhood character and need, which Zoning Regulation § 3104.44 required it to address. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Due process requirements in hacker suspension proceedings. — In hacker suspension proceedings, due process requires that a taxi driver be afforded the opportunity to inspect his file and to secure information vital to his own investigation and defense. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Due process requires the Hackers' License Appeal Board to notify a charged party of his right to inspect his file after formal charges are filed and before the date of the suspension hearing. *Babazadeh v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 390 A.2d 1004).

Firearms control statute conforms to Administrative Procedure Act. — The Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) conforms to the Administrative Procedure Act (§ 1-1501 et seq.) in the case of revocation or denial of a registration certificate for a dealer's license. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Sherman v. Commission on Licensure to Practice Healing Art* (D.C. 1979, 407 A.2d 595); *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71); *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703); *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Jameson's Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412); *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

§ 1-1510. Judicial review.

Section referred to in section. 40-1125.

NOTES TO DECISIONS

Scope of Court of Appeals' authority to review. — The fact that an administrative agency may be without authority to invalidate the statutory or regulatory scheme under which it operates does not mean that the review of such agency decision, including resolution of the constitutional questions raised by a party, is in a tribunal other than the District of Columbia Court of Appeals. *Debruhl v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 384 A.2d 421).

When the findings of basic facts are each supported by sufficient evidence and, when taken together, rationally lead to conclusions of law and an agency decision consistent with the governing statute, the Court of Appeals shall affirm that decision. *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

If there is substantial evidence to support the Alcoholic Beverage Control Board's finding, then the mere existence of substantial evidence contrary to that finding does not

allow the Court of Appeals to substitute its judgment for that of the Board. *Spevak v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 549).

Standard for review. — Appellate court reviewing a decision of the Board of Zoning Adjustment required that there be a rational connection between the facts found by the Board and its decision. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Act of compiling and preserving a factual record enables the reviewing court to determine whether the decision-maker's choice was both reasonable and proper in the specific factual context. *Johnson v. United States* (D.C. 1979, 398 A.2d 354).

Order requiring removal of illegal backyard structure was vacated as contrary to law where for over six years officials had failed to enforce a series of enforcement orders against the petitioner and a prior owner and where the equities compellingly favored petitioner because he

doubtless took the value of the structure into account when purchasing the property, because he would lose substantial rental income from the structure were it destroyed and because the government had had actual notice of the structure's illegality for a long period. *Wieck v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 383 A.2d 7).

Reviewing court criticized as ratification of an illegal act the grant of a special exception by the Board of Zoning Adjustment to a party whose prior use of the property as a parking lot had been unlawful under Zoning Regulation § 8105.1. *Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 390 A.2d 1009).

Evidence sufficient to support board's findings. — *Wheeler v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 395 A.2d 85).

Cited in *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707); *Sherman v. Commission on Licensure to Practice Healing Art* (D.C. 1979, 407 A.2d 595); *Taylor v. District of Columbia Rental Accommodations Comm'n* (D.C. 1979, 404 A.2d 173); *Rorie v. District of Columbia Dep't of Human Resources* (D.C. 1979, 403 A.2d 1148); *Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 403 A.2d 737);

DuPont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment (D.C. 1979, 403 A.2d 314); *In Re Smith* (D.C. 1979, 403 A.2d 296); *Russell v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 402 A.2d 1231); *American Univ. Park Citizens Ass'n v. Burka* (D.C. 1979, 400 A.2d 737); *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861); *In re Dwyer* (D.C. 1979, 399 A.2d 1); *Silverstone v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 396 A.2d 992); *Carr v. Brown* (D.C. 1978, 395 A.2d 79); *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57); *Babazadeh v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 390 A.2d 1004); *Wells v. District of Columbia Bd. of Educ.* (D.C. 1978, 386 A.2d 703); *Haugness v. District Unemployment Comp. Bd.* (D.C. 1978, 386 A.2d 700); *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674); *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Jameson's Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412); *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29); *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Subchapter III.—Legal Publication

§ 1-1531. Definitions.

For purposes of this subchapter:

(a) the terms “Mayor”, “Council”, “District”, “agency”, “rule”, “rulemaking”, “person”, “licensing” and “regulation” (except when used in the term “District of Columbia Municipal Regulations”) shall have the meaning provided in section 1-1502;

(b) the terms “Commissioner”, “District of Columbia Council”, “Chairman”, “act” and “District of Columbia courts”, shall have the meaning provided in section 1-122;

(c) the term “Administrator” means the person appointed by the Mayor to supervise and control the District of Columbia Office of Documents in accordance with section 1-1611;

(d) the phrase “D.C. Code” means the code of the District of Columbia laws as provided for in chapter 3 of the Act of July 30, 1947 (61 Stat. 636) and any continuations, supplements or revisions thereof authorized by act, Congressional resolution or act; and

(e) the phrase “document having general applicability and legal effect” means any document issued under lawful authority prescribing a sanction or course of conduct, conferring a right, privilege, authority or immunity or imposing an obligation, and applicable to the general public, members of a class or persons in a locality, as distinguished from named individuals or organizations. The phrase “document having general applicability and legal effect” does not include any act to be codified in the D.C. Code or a personnel manual or internal staff directive solely applicable to employees or agents of the District of Columbia. (Mar. 6, 1979, D.C. Law 2-153, § 4(301), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

Short title. The first section of Act Mar. 6, 1979, D.C. Law 2-153, provided: “That this act may be cited as the ‘District of Columbia Documents Act.’”

§ 1-1532. Comprehensive compilation of District of Columbia Municipal Regulations.

(a) The District of Columbia Office of Documents, established pursuant to section 1-1611, shall supervise, manage, and direct the preparation, editing, publishing and supplementation of an official legal compilation entitled the District of Columbia Municipal Regulations (DCMR). The District of Columbia Municipal Regulations shall be published in a manner to promote efficient public access to all current District of Columbia rules and regulations.

(b) Except as otherwise provided by law, the following documents shall be accurately compiled in the District of Columbia Municipal Regulations:

(1) every rule, regulation and document having general applicability and legal effect adopted by the Commissioner, the Mayor, the District of Columbia Council and each agency;

(2) every act of the Council which is not codified or to be codified in the D.C. Code and which is not enacted in emergency circumstances as provided in section 1-146;

(3) every rule, regulation and document having general applicability and legal effect which is adopted under authority of law by a board, commission or instrumentality of the District of Columbia: Provided, that nothing in this subparagraph shall be construed to apply to the District of Columbia courts;

(4) any document which the Council by resolution finds to be a document having general applicability and legal effect and which the Council by resolution orders to be printed.

(c) The District of Columbia Municipal Regulations shall contain the entire text of each document to be compiled under this section without any incorporation by reference unless (1) the publication of the document would be impractical due to its unusual lengthiness; (2) the document is not itself a rule, regulation or document having general applicability and legal effect but is incorporated by reference in a rule, regulation, or document having general applicability and legal effect; (3) a copy of the document incorporated by reference is available to the public at every public library branch in the District of Columbia and at the relevant agency headquarters; and (4) the incorporation by reference includes a specific indication of how and where a copy of such document may be inspected and obtained.

(d) The Administrator shall ensure that the District of Columbia Municipal Regulations shall contain the following research aids:

(1) a citation or historical note to the original rule or act from which each section in the District of Columbia Municipal Regulations was derived;

(2) a reference to where the original form of each rule, act, or document contained in the District of Columbia Municipal Regulations can be inspected or copied;

(3) parallel reference tables indexing the sections of the District of Columbia Municipal Regulations to enabling legislation and other provisions of law which the District of Columbia Municipal Regulations implements;

(4) major parts organized according to subject matter headings with subdivisions thereof organized according to government agency titles; and

(5) a comprehensive index relating to sections of the District of Columbia Municipal Regulations to subject matter topics and to the organizational units of government.

(e) The Administrator may prepare (or procure by contract in accordance with applicable law) and include in the District of Columbia Municipal Regulations annotations of judicial decisions, and other explanatory material relating to any document published in the District of Columbia Municipal Regulations.

(f) Each complete edition of the entire District of Columbia Municipal Regulations may be published in segments if it is deemed to be expeditious in the judgment of the Administrator. (Mar. 6, 1979, D.C. Law 2-153, § 4(302), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and

replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 1-1535.

§ 1-1533. District of Columbia Register.

(a) The District of Columbia Office of Documents shall also supervise, manage and direct the preparation, editing and publishing of the District of Columbia Register which shall serve as the only official legal bulletin in the District of Columbia government and the temporary supplement of the District of Columbia Municipal Regulations.

(b) The District of Columbia Register shall contain the entire text of the following:

(1) every rule, regulation and document having general applicability and legal effect required to be but not yet published and integrated in the District of Columbia Municipal Regulations as provided in this subchapter;

(2) every notice of public hearing issued by an agency;

(3) every notice of proposed agency rulemaking or repeal and every other document required to be published under the District of Columbia Administrative Procedure Act (D.C. Code sec. 1-1501 et seq.); and

(4) every act, resolution, and notice of the Council and any other document requested to be published by the Chairman of the Council or his or her designee.

(c) The Administrator is authorized to publish in the District of Columbia Register:

(1) any document requested to be published by the Joint Committee on Judicial Administration in the District of Columbia;

(2) information on changes in the organization of the District of Columbia government;

(3) notices of public hearings not published under authority of subsection (b) of this section; and

(4) such other matters as the Mayor may from time to time determine to be of general public interest.

(d) The Administrator may exercise the discretion of omitting from the District of Columbia Register the publication of the entire text of a document if (1) such publication would be unduly cumbersome or expensive and (2) if, in lieu of such publication, there is included in the District of Columbia Register a notice stating the general subject matter of any document so omitted and the specific manner in which a copy of such document may be obtained.

(e) If the text of an adopted act or rule is the same as the text of the previously published proposed act or rule, the Administrator may insert in the District of Columbia Register a notation to this effect, giving the publication date of and citation to the District of Columbia Register issue containing the proposed act or rule.

(f) If, after a proposed rule has been published initially in the District of Columbia Register, an agency decides to alter the initial text so that the proposed rule is substantially different from the initial text, the agency shall submit the altered text as though for initial publication. The alterations shall be indicated by the use of symbols determined by the Administrator.

(g) The District of Columbia Register shall be published on at least each Friday, or, if Friday is a legal holiday, on the next working day. Each year the Administrator shall publish quarterly a cumulative index of all matters published in the District of Columbia Register during the year.

(h) On each document published in the District of Columbia Register there shall appear the date upon which such document was filed with the Administrator pursuant to section 1-1534. On each issue of the District of Columbia Register there shall appear on its cover the actual date such issue was generally circulated to the public for review and comment: Provided, that should the District of Columbia Register be generally circulated after the cover date shown, a notice stating the correct date shall be attached thereto. All time computations based upon publication in the District of Columbia Register shall commence from the cover date, or, if corrected, the date of notice thereof. The provisions of this subsection shall apply to any and all supplemental editions to the District of Columbia Register. (Mar. 6, 1979, D.C. Law 2-153, § 4(303), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1534. Documents to be filed in the District of Columbia Office of Documents.

Any document required or authorized to be published in the District of Columbia Municipal Regulations or the District of Columbia Register shall be filed with the District of Columbia Office of Documents. If a document has been published pursuant to subchapter I of this chapter and forwarded to the Office of the Secretariat prior to March 6, 1979, such document need not be filed with the District of Columbia Office of Documents, unless the Administrator otherwise notifies the person responsible for filing the document. (Mar. 6, 1979, D.C. Law 2-153, § 4(304), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.
Section referred to in sections. 1-1533, 1-1536.

§ 1-1535. Permanent supplements to the District of Columbia Municipal Regulations.

At least once each year, every document required to be compiled pursuant to section 1-1532 shall be permanently integrated into the District of Columbia Municipal Regulations by publication of loose-leaf pages or other appropriate permanent supplements of the District of Columbia Municipal Regulations. The index of the DCMR shall be similarly supplemented or reissued. (Mar. 6, 1979, D.C. Law 2-153, § 4(305), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1536. Filing future documents with the Administrator.

Except as provided in section 1-1534, two copies of any document to be published pursuant to this subchapter shall be filed with the Administrator. The Administrator shall immediately review filed documents to determine their conformity to the provisions of this subchapter and to editorial standards promulgated by the Administrator. Upon the Administrator's determination of a document's conformity with this section, one copy of such document shall be prepared for publication and one copy kept for permanent historic preservation. (Mar. 6, 1979, D.C. Law 2-153, § 4(306), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1537. Publication specifications of the District of Columbia Municipal Regulations.

(a) The District of Columbia Municipal Regulations and its permanent supplements shall be published pursuant to typographical and contractual arrangements which ensure that the District of Columbia Municipal Regulations can be purchased at a reasonable cost in its entirety or in portions of related rules, regulations or documents having general applicability and legal effect.

(b) Copies of the District of Columbia Municipal Regulations shall be available to the public at each regular branch of the District of Columbia Library System and to each Advisory Neighborhood Commission established by the Council. (Mar. 6, 1979, D.C. Law 2-153, § 4(307), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1538. Legal effectiveness of documents.

(a) Notwithstanding any other provision of this subchapter, any rule, regulation, or document having general applicability and legal effect which has been adopted or enacted by the Commissioner, the Mayor, the District of Columbia Council, an agency, or other instrumentality of the District before the effective date of this subchapter and which is not published in the District of Columbia Municipal Regulations four hundred and twenty-five (425) days after the effective date of this subchapter shall not be in effect thereafter.

(b) Except in the case of emergency rules or acts, no rule or document of general applicability and legal effect adopted or enacted on or after the effective date of this subchapter shall become effective until after its publication in the District of Columbia Register, nor shall such rule or document of general applicability and legal effect become effective if it is required by law, other than subchapter I of this chapter or this subchapter, to be otherwise published, until such rule or document of general applicability and legal effect is also published as required by such law. (Mar. 6, 1979, D.C. Law 2-153, § 4(308), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967,

were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1539. Errors in publication of documents.

The Administrator of the District of Columbia Office of Documents shall correct grammatical or typographical errors in the printing of the text of a document in the District of Columbia Statutes-at-Large, the District of Columbia Register or the District of Columbia Municipal Regulations by the publication of an errata list or by publication of the entire document or the affected part of the document in its corrected form so as to indicate the actual corrections which were made. (Mar. 6, 1979, D.C. Law 2-153, § 4(309), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1539.1. Certification.

Each part of the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, each permanent supplement of the District of Columbia Municipal Regulations, and the District of Columbia Register shall contain a certificate by the Administrator stating that such part contains all documents required to be published pursuant to this subchapter as of the date of such certificate. (Mar. 6, 1979, D.C. Law 2-153, § 4(310), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1539.2. Presumption created by publication.

The publication of any document in the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations or the District of Columbia Register creates a rebuttable presumption:

(a) that it was duly issued, prescribed, adopted or enacted; and

(b) that all requirements of this subchapter have been complied with. (Mar. 6, 1979, D.C. Law 2-153, § 4(311), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1539.3. Criminal penalties.

Any person who knowingly and willfully causes any document not to be published in the District of Columbia Statutes-at-Large, the District of Columbia Register, or the District of Columbia Municipal Regulations which is required to be so published pursuant to this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$100 or imprisoned not more than 30 days, or both. (Mar. 6, 1979, D.C. Law 2-153, § 4(312), 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

CHAPTER 16.—CODIFICATION AND PUBLICATION OF ACTS, RESOLUTIONS,
RULES, AND ORDERS

| | | |
|---|---|---|
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Subchapter I.—General Provisions

§ 1-1602. Publication of Council acts and resolutions.

Unless adopted pursuant to the emergency circumstances provision of section 1-146 (a), no Council act or resolution shall be effective unless it has been published in the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations. (Oct. 8, 1975, D.C. Law 1-19, title II, § 204, 22 DCR 2058; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Apr. 7, 1977, D.C. Law 1-115, § 2, 23 DCR 8744; Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-153, amended section by repealing subsections (a), (b), (c), (d), (e) and (f)(2), by deleting the designation “(f)(1)” at the beginning of the section, and by substituting “Regulations” for “Code” at the end of the section.

Legislative History of Law 2-153. See note to § 1-1611.
Section referred to in section. 40-1110.

§ 1-1603. Statutes-at-Large — Contents — Distribution.

(a) Within forty-five days of the end of each Council year, the Mayor shall compile and publish the District of Columbia Statutes-at-Large which shall include in separate chronological order:

* * * * *

- (2) Council resolutions adopted during that Council year.
- (3) Repealed. Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-153, amended section by deleting “and” at the end of paragraph (2) of

subsection (a) and by repealing paragraph (3) of that subsection.
Legislative History of Law 2-153. See note to § 1-1611.

§ 1-1605. Judicial notice.

All courts within the District of Columbia shall take judicial notice of the acts and resolutions published in the District of Columbia Statutes-at-Large. (Oct. 8, 1975, D.C. Law 1-19, title II, § 207, 22 DCR 2063; Mar. 6, 1979, D.C. Law 2-153, § 6(c), 25 DCR 6960.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-153, amended section by inserting “judicial”, and by deleting “rules” following “acts”, “in the District of Columbia Municipal Code in accordance with this chapter, and said courts shall also take notice of the acts and resolutions published”

following “published” and “to the extent that they are in force in accordance with section 1-1602 (f)” following “Statutes-at-Large.”
Legislative History of Law 2-153. See note to § 1-1611.

Subchapter II.—District of Columbia Office of Documents

§ 1-1611. Creation of the District of Columbia Office of Documents.

(a) Part IV D of Organization Order No. 2, Commissioner’s Order No. 67-23, December 13, 1967, creating the Secretariat within the Executive Office of the Mayor, is amended:

- (1) by striking subsection 1.k.; and
- (2) by transferring, as provided in this subchapter, to the District of Columbia Office of Documents all of the powers, duties and functions assigned to the Secretariat under any provision of law relating to the preparation, certification and publication of the District of

Columbia Register and all District of Columbia rules, regulations, codes, ordinances and any amendments thereto.

(b) There is hereby established within the Executive Office of the Mayor (created by Organization Order No. 2, dated December 23, 1967) a District of Columbia Office of Documents which shall be under the supervision and control of an Administrator appointed by the Mayor without regard to political affiliation and solely on the basis of fitness to perform the duties of the position.

(c) The District of Columbia Office of Documents shall provide for the prompt preparation, editing, printing and public distribution of the District of Columbia Statutes-at-Large, the District of Columbia Register and the District of Columbia Municipal Regulations in accordance with this subchapter.

(d) The Administrator of the District of Columbia Office of Documents (hereinafter also referred to as "Administrator") shall be a member of the District of Columbia Bar. The Administrator shall appoint such employees within the District of Columbia Office of Documents as may be necessary for the prompt and efficient performance of the functions of the Office and for which sufficient appropriation is authorized and provided.

(e) The Administrator shall be paid at a per annum gross rate not to exceed the highest step level of GS-15 of the General Schedule.

(f) No fewer than seven (7) funded and authorized positions and the attendant funding totaling at least one hundred and fifty thousand dollars (\$150,000) for salaries and personnel benefits for such positions shall be transferred by the Mayor to the District of Columbia Office of Documents.

(g) All property, records and unexpended balances of appropriated funds in the Office of the Secretariat which are currently allotted for legal publications, codification and the District of Columbia Register functions shall be transferred to the District of Columbia Office of Documents. All rules, regulations, documents and other materials assembled or developed by the Mayor's Municipal Code Compilation Project shall be transferred to the Office of Documents. (Mar. 6, 1979, D.C. Law 2-153, § 2, 25 DCR 6960.)

Legislative History of Law 2-153. Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No.

2-319 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 6, 1979, D.C. Law 2-153, provided: "That this act may be cited as the 'District of Columbia Documents Act.'"

Section referred to in sections. 1-1531, 1-1532.

§ 1-1612. Powers of the District of Columbia Office of Documents.

The Administrator of the District of Columbia Office of Documents shall:

(a) supervise, manage and direct the preparation, editing, printing and public distribution of all legal publications of the District of Columbia government including the District of Columbia Statutes-at-Large, the District of Columbia Register and the District of Columbia Municipal Regulations in accordance with this subchapter;

(b) promulgate appropriate rules of procedure to implement the provisions of this subchapter;

(c) with the assistance of the Office of the Corporation Counsel, the officer designated by the Chairman of the Council, or legal counsels to agencies and other governmental entities, certify the promulgation, adoption or enactment of documents to be published in accordance with this subchapter;

(d) coordinate with the officer designated by the Chairman of the Council the drafting and preparation of legislation to be published in the District of Columbia Register and the District of Columbia Municipal Regulations;

(e) establish editorial standards for the removal of unnecessary sex-based terminology in documents and for the numbering, grammar and style of all documents to be published pursuant to this subchapter;

- (f) except with respect to acts or resolutions of the Council, reject for publication proposed rules, regulations, orders, administrative issuances or ordinances which fail to comply substantially with the publication requirements authorized by this subchapter;
 - (g) in accordance with applicable law, procure contracts for the preparation and publication of documents pursuant to this subchapter; and
 - (h) instruct promulgators of documents to be published under this subchapter concerning the requirements established by the Administrator under this subchapter and the means to comply with those requirements.
- (Mar. 6, 1979, D.C. Law 2-153, § 3, 25 DCR 6960.)

Legislative History of Law 2-153. See note to § 1-1611.

CHAPTER 18.—DISTRICT OF COLUMBIA
RETIREMENT FUNDS

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Subchapter I.—Findings and Purpose; Definitions

§ 1-1801. Findings and purpose.

- (a) The Congress finds that the retirement benefits authorized by various Acts of Congress for the police officers, fire fighters, teachers, and judges of the District of Columbia have not been financed on an actuarially sound basis. Neither Federal payments to the District nor District of Columbia appropriations have taken into account the long-term financial requirements of the District's retirement programs. As a result, the annual budget cost to the District of Columbia for annuities and refunds of deductions is growing at a rapid rate and, in the case of the retirement program for police officers and fire fighters, is predicted to exceed the cost of salaries for active police officers and fire fighters by the year 2000.
- (b) It is the purpose of this chapter —
- (1) to establish separate retirement Funds for police officers and fire fighters, for teachers, and for judges of the District of Columbia;
 - (2) to establish a Retirement Board with responsibility for managing these Funds;
 - (3) to require that these Funds be managed on an actuarially sound basis in order to provide proper financing for the benefits to which the District's retired police officers, fire fighters, teachers, and judges are entitled;

(4) to require that the Retirement Board comply with reporting and disclosure requirements similar to those imposed under the Employee Retirement Income Security Act of 1974; and

(5) to provide for Federal payments to these Funds to help finance, in part, the liabilities for retirement benefits incurred by the District of Columbia prior to the establishment of self-government under the District of Columbia Self-Government and Governmental Reorganization Act.

(Nov. 17, 1979, Pub. L. 96-122, § 101, 93 Stat. 866.)

Short title. The first section of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided: "This Act, with the following table of contents, may be cited as the 'District of Columbia Retirement Reform Act.'"

§ 1-1802. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia.

(3) The term "Speaker" means the Speaker of the House of Representatives.

(4) The term "President pro tempore" means the President pro tempore of the Senate.

(5) The term "Board" means the District of Columbia Retirement Board established by section 1-1811.

(6) The term "Custodian of Retirement Funds" means the Board, except that until such time as the members of the Board are first elected and the Board certifies pursuant to section 1-1811 (h) that it is assuming responsibility for the Funds established by this chapter, the term "Custodian of Retirement Funds" means the Director of the Office of Budget and Financial Management of the District of Columbia (established by Organization Order Numbered 30, Commissioner's Order Numbered 72-80, April 5, 1972 (D.C. Code, title 1 — Appendix)).

(7) The term "retirement program" means—

(A) the program of annuities and other retirement and disability benefits for members and officers of the Metropolitan Police force and the Fire Department of the District of Columbia, but does not include the program of annuities and other retirement and disability benefits for members and officers of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.);

(B) the program of annuities and other retirement and disability benefits for judges of the courts of the District of Columbia under subchapter III of chapter 15 of title 11 of the District of Columbia Code; or

(C) the program of annuities and other retirement and disability benefits for teachers in the public day schools of the District of Columbia.

(8) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

(9) The term "party in interest" means —

(A) any person (including a member of the Board) having fiduciary responsibilities under this chapter;

(B) any person providing services to a Fund;

(C) the government of the District of Columbia;

(D) an employee organization; and

(E) a spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in subparagraph (A) or (B).

(10) The term "Fund" means the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812, the District of Columbia Teachers' Retirement Fund established by section 1-1813, or the District of Columbia Judges' Retirement Fund established by section 1-1814.

(11) The term "current value" means fair market value where available (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Board) or otherwise the fair value (as determined in good faith by a fiduciary in accordance with regulations

promulgated by the Board), assuming an orderly liquidation at the time of such determination.

(12) The term “future value” means a liability for a given prior fiscal year expressed in terms of the price level expected to prevail in a given future fiscal year, adjusted at the rate of inflation used with regard to determinations made under section 1-1822 (a) (1).

(13) The term “qualified public accountant” means a person who is a certified public accountant, certified by a regulatory authority of a State.

(14) The term “enrolled actuary” means an actuary enrolled under subtitle C of title III of the Employee Retirement Income Security Act of 1974.

(15) The term “security” means a security as defined in section 2 (1) of the Securities Act of 1933.

(16) The term “employee organization” means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which individuals covered by a retirement program participate and which exists for the purpose, in whole or in part, of dealing with the government of the District of Columbia concerning such retirement program.

(17) The term “teacher” means a teacher as defined in section 31-733.

(18) The term “judge” means a judge as defined in section 11-1561(1).

(19) The term “participant” does not include an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division to whom the Policemen and Firemen’s Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.) applies; and, unless the context requires otherwise, the term “beneficiary” does not include a beneficiary under such Act of any such officer or member.

(Nov. 17, 1979, Pub. L. 96-122, § 102, 93 Stat. 866.)

Section referred to in sections. 4-502, 4-523, 4-524, 11-1563, 31-721, 31-725, 31-729, 31-745.

Subchapter II.—Establishment of Retirement Board and Retirement Funds

§ 1-1811. District of Columbia Retirement Board.

(a) There is established, as an independent agency of the government of the District of Columbia, a board of trustees to be known as the District of Columbia Retirement Board which shall have exclusive authority and discretion (subject to the requirements of this chapter) to manage and control the Funds established by this chapter.

(b) (1) The Board shall consist of eleven members selected as follows:

(A) One member or officer of the Metropolitan Police force of the District of Columbia, to be elected by the members and officers of the Metropolitan Police force.

(B) One retired member or officer of the Metropolitan Police force of the District of Columbia, to be elected by the retired members and officers of the Metropolitan Police force.

(C) One member or officer of the Fire Department of the District of Columbia, to be elected by the members and officers of the Fire Department.

(D) One retired member or officer of the Fire Department of the District of Columbia, to be elected by the retired members and officers of the Fire Department.

(E) One teacher in the public day schools of the District of Columbia, to be elected by the teachers of the public day schools of the District of Columbia.

(F) One teacher in the public day schools of the District of Columbia who is retired, to be elected by the retired teachers of the public day schools of the District of Columbia.

(G) Two individuals appointed by the Council of the District of Columbia.

(H) Three individuals appointed by the Mayor.

A vacancy on the Board shall be filled in the manner in which the original selection was made.

(2) The first election of the Board members described in subparagraphs (A) through (F) of paragraph (1) shall be conducted within six months after the date of the enactment of this chapter in accordance with regulations which the Mayor shall promulgate. Thereafter, elections

shall be conducted by the Board. In any such election, voting shall be by secret ballot, and each individual to be represented on the Board by the winner of such election shall be eligible to vote in such election.

(3) (A) Except as provided in subparagraph (B), the members of the Board shall each serve a term of four years, except that a member selected to fill a vacancy occurring prior to the end of the term for which his predecessor was selected shall only serve until the end of such term. A member may serve after the expiration of his term until his successor has taken office.

(B) Of the members of the Board who are first selected—

- (i) two shall serve for a term of one year,
- (ii) three shall serve for a term of two years,
- (iii) three shall serve for a term of three years, and
- (iv) three shall serve for a term of four years,

as determined by lot at the first meeting of the Board.

(4) No individual shall serve more than two terms as a member of the Board, except that an individual serving less than two years of a term to which some other individual was originally selected shall be eligible for two full terms as a member of the Board and an individual serving two years or more of a term to which some other individual was originally selected shall be eligible for only one full term as a member of the Board.

(5) Any individual who was selected as a member of the Board under subparagraph (A), (C), or (E) of paragraph (1) and who ceases to be a member or officer of the Metropolitan Police force, member or officer of the Fire Department, or a teacher, as the case may be, may not continue as a member of the Board.

(6) No member of the Board may hold or be a candidate for any elective office in the District of Columbia.

(7) No member of the Board may have any personal interest, direct or indirect (except as a participant in a retirement program), in any transaction involving assets of the Funds established by this chapter and shall otherwise comply with the standards of conduct applicable to fiduciaries in the District of Columbia, as well as those standards of conduct established by subchapter V of this chapter.

(8) Not less than two of the members of the Board appointed by the Mayor under paragraph (1) shall be individuals who have professional work experience in the banking, insurance, or investment industry.

(9) Any member of the Board may be removed from the Board by a vote of two-thirds of the members of the Board for a breach of fiduciary responsibility with respect to a Fund or for a violation of section 1-1844.

(10) The Board shall elect one member of the Board to be Chairman of the Board. The Chairman shall be elected for a term of one year, but may be removed from such position by a vote of two-thirds of the members of the Board.

(11) The Director of the Office of Budget and Financial Management of the District of Columbia shall be an ex officio member of the Board, but shall not vote, shall not be eligible to be elected Chairman of the Board, and shall not be counted for purposes of a quorum.

(c) Subject to the availability of appropriations therefor, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of pay in effect for the highest step of grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, for each hour such member is engaged in the actual performance of duties vested in the Board, except that any member of the Board who is a full-time officer or employee of the District of Columbia or the United States shall not be entitled to receive pay under this subsection for performance of duties vested in the Board.

(d) (1) The Board shall meet at least once each calendar quarter at a regular and specified time. It shall meet at such other times as the Chairman or any three members of the Board may prescribe.

(2) Any six members shall constitute a quorum for the transaction of the business of the Board.

(3) Except as otherwise provided in this chapter, actions of the Board shall be determined by a majority vote of the members present and voting.

(e) The Board shall from time to time promulgate rules and regulations, adopt resolutions, issue directives for the administration and transaction of its business and for the control of the Funds established by this chapter, and perform such other functions as may be necessary to carry out its responsibilities under this chapter.

(f) (1) All administrative expenses incurred by the Board in carrying out this chapter, including compensation for the members of the Board, shall be paid out of funds appropriated for such purpose.

(2) The budget prepared and submitted by the Mayor pursuant to section 47-221 shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board.

(3) The Mayor and the Council may establish the amount of funds which will be allocated to the Board for administrative expenses, but may not specify the purposes for which such funds may be expended or the amounts which may be expended for the various activities of the Board.

(g) (1) The Board shall engage the services of competent investment counsel or counsels who shall be qualified under the Investment Advisors Act of 1940 (15 U.S.C. § 80b-1 et seq.). Such investment counsel or counsels shall be fiduciaries, to the extent designated by the Board, with respect to services rendered to the Board. Such fiduciary relationship shall be specified in a written agreement between the investment counsel or counsels and the Board.

(2) The Board may appoint such staff as it considers necessary to enable it to carry out its responsibilities under this chapter. The staff of the Board shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no staff member may receive pay in excess of the annual rate of basic pay in effect for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(h) Not more than ninety days after all initial members of the Board have been selected in accordance with subsection (b) of this section, the Board shall certify in writing to the Director of the Office of Budget and Financial Management of the District of Columbia that the Board is assuming responsibility for the Funds established by this chapter. (Nov. 17, 1979, Pub. L. 96-122, § 121, 93 Stat. 866.)

Section referred to in sections. 1-1802, 1-1821.

§ 1-1812. District of Columbia Police Officers and Fire Fighters' Retirement Fund.

There is established a fund to be known as the District of Columbia Police Officers and Fire Fighters' Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

(1) Any amount paid to the Custodian of Retirement Funds pursuant to the last sentence of section 4-524(1) or to section 4-523(5) or pursuant to section 4-502.

(2) Any amount appropriated for such Fund under subchapter III of this chapter.

(3) Any return on investment of the assets of such Fund.

After September 30, 1979, or after the end of the thirty-day period beginning on the date on which funds are first appropriated to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, whichever is later, all payments of annuities and other retirement and disability benefits (including refunds and lump-sum payments) under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.) shall be made from the Fund (except for any such payment which is made to an officer or member of the United States Park Police force, the Executive Protection Service, or the United States Secret Service Division, or to a beneficiary of any such officer or member).

(Nov. 17, 1979, Pub. L. 96-122, § 122(a), 93 Stat. 866.)

Section referred to in sections. 1-1802, 4-502, 4-504a, 4-523, 4-524, 4-531.1.

§ 1-1813. District of Columbia Teachers' Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Teachers' Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

- (1) Any amount paid to the Custodian of Retirement Funds pursuant to section 31-721 et seq., or under section 31-745.
- (2) Any asset transferred to such Fund under subsection (b).
- (3) Any amount appropriated for such Fund under subchapter III of this chapter.
- (4) Any return on investment of assets of such Fund.

Annuities and other retirement and disability benefits (including refunds and lump-sum payments) payable from the District of Columbia teachers' retirement and annuity fund established by section 31-722, shall continue to be paid from such fund until all amounts in such fund have been expended or transferred under subsection (b) to the District of Columbia Teachers' Retirement Fund, and thereafter such benefits shall be paid from the District of Columbia Teachers' Retirement Fund.

(b) Notwithstanding any other provision of law, any asset held in the District of Columbia teachers' retirement and annuity fund established by section 31-722 may be transferred to the District of Columbia Teachers' Retirement Fund established by subsection (a). (Nov. 17, 1979, Pub. L. 96-122, § 123(a), (c), 93 Stat. 866.)

Section referred to in sections. 1-1802, 31-721, 31-725, 31-729, 31-734, 31-737, 31-739.1, 31-739e, 31-744, 31-745.

§ 1-1814. District of Columbia Judges' Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Judges' Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

- (1) Any amount deposited pursuant to subchapter III of chapter 15 of title 11 of the District of Columbia Code.
- (2) Any asset transferred to such Fund under subsection (b).
- (3) Any amount appropriated for such Fund under subchapter III of this chapter.
- (4) Any return on investment of the assets of such Fund.

(b) Notwithstanding any other provision of law, any asset held in the District of Columbia Judicial Retirement and Survivors Annuity Fund may be transferred to the District of Columbia Judges' Retirement Fund established by subsection (a). (Nov. 17, 1979, Pub. L. 96-122, § 124(a), (c), 93 Stat. 866.)

Section referred to in sections. 1-1802, 11-1561, 11-1564, 11-1570.

§ 1-1815. Management of Retirement Funds.

(a) The Custodian of Retirement Funds shall be the custodian of the assets of each Fund established by this chapter and shall manage and invest such assets in accordance with this chapter.

(b) The assets of each Fund shall be kept separate from other moneys which may be under the control of the Custodian of Retirement Funds, but need not be kept separate from the assets of the other Funds if the Board determines that commingling of such assets is advisable for investment purposes.

(c) The Board shall maintain, in an appropriate depository, a cash reserve for the Funds in an amount determined by the Board to be sufficient to meet current outlays for annuities and other retirement and disability benefits authorized to be paid from such Funds. (Nov. 17, 1979, Pub. L. 96-122, § 125, 93 Stat. 866.)

§ 1-1816. Payments from the Funds.

The Mayor shall notify the Custodian of Retirement Funds of any payments to be made from the Funds established by this chapter for annuities or other retirement or disability benefits (including refunds and lump-sum payments), and the Custodian of Retirement Funds shall make such payments from the appropriate Fund. (Nov. 17, 1979, Pub. L. 96-122, § 126, 93 Stat. 866.)

*Subchapter III.—Financing of Retirement Benefits***§ 1-1821. Limitation on investment of Retirement Funds.**

(a) The assets of the Funds established by this chapter may not be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments.

(2) Obligations fully guaranteed as to the payment of both principal and interest by the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments.

(3) Real property in the District of Columbia, Virginia, or Maryland.

(4) Loans, mortgages, bonds, notes, bills, or certificates of indebtedness secured, in whole or in part, by real property in the District of Columbia, Virginia, or Maryland.

(b) Until such time as the members of the Board are first selected and the Board certifies pursuant to section 1-1811 (h) that it is assuming responsibility for the Funds established by this chapter, the assets of such Funds may only be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the United States Government, or obligations fully guaranteed as the payment of both principal and interest by the United States Government.

(2) Interest-bearing certificates of deposit issued by National, State, or District of Columbia savings and loan institutions.

(Nov. 17, 1979, Pub. L. 96-122, § 141, 93 Stat. 866.)

§ 1-1822. Determination of Federal and District of Columbia payments to the Funds.

(a) (1) The Board shall engage an enrolled actuary who may be the enrolled actuary engaged pursuant to section 1-1832 (a) (4) (A), who shall, on the basis of the entry age normal cost funding method and in accordance with generally accepted actuarial principles and practices, make the following determinations with respect to each Fund:

(A) At the times specified in paragraph (2), the actuary shall determine the level percentage of payroll, expressed as a percentage (hereinafter in this chapter referred to as the “net normal cost percentage”), which shall be the percentage such that the amount equal to the product of such percentage and the present value of future compensation for participants in the retirement program, if paid annually into the Fund from the date of hire of each participant in the retirement program until the date of such participant’s death, retirement, or other withdrawal from employment covered by the retirement program, is equal to the amount of the difference between (i) the present value of the future benefits payable from the Fund to such group, and (ii) the present value of all future employee contributions to the Fund.

(B) At the times specified in paragraph (2), the actuary shall determine the amount (hereinafter in this chapter referred to as the “accrued actuarial liability”) that is the difference between (i) the present value (as of the date of the determination) of the future benefits payable from the Fund, and (ii) the sum of —

(I) the present value of all future employee contributions to the Fund; and

(II) the product of the net normal cost percentage and the present value of future compensation for participants in the retirement program.

(C) At the times specified in paragraph (2), the enrolled actuary shall determine the current value of the assets in the Fund.

(D) Each year, not later than sixty days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under section 47-221 (a), the enrolled actuary shall determine—

(i) an estimate of the current annual active duty payroll;

(ii) the amount (hereinafter in this chapter referred to as the “future Federal obligation”) that is the amount of the present value of the sum of the amounts authorized by section 1-1824 (a) to be appropriated to the Fund for fiscal years beginning on or after the date of the determination; and

(iii) the amount (hereinafter in this chapter referred to as the “net pay-as-you-go-cost”) that is the difference between (I) the amount of the obligation of the Fund during the next fiscal year for the payment of benefits payable from the Fund during such year, and (II) the amount of employee contributions to the Fund for such year.

The actuary shall also determine such additional information as the Board may require in order to make the determinations specified in paragraph (4) and in subsection (b).

(2) The actuary engaged by the Board pursuant to paragraph (1) shall make the determinations described in subparagraphs (A), (B), and (C) of such paragraph at the following times:

(A) Not later than sixty days after the date of the enactment of this chapter.

(B) Upon a request by the Board or by the Director of the Office of Management and Budget.

(C) Not later than the end of the ninety-day period beginning on the first day of the third fiscal year occurring after the fiscal year in which the last such determination was made pursuant to any subparagraph of this paragraph.

(3) On the basis of the most recent determinations made under paragraph (1), the enrolled actuary shall certify to the Board each year, at a time specified by the Board, the following information with respect to each Fund for the next fiscal year:

(A) The net normal cost, which shall be computed as the product of the net normal cost percentage and the estimate by the actuary of the current annual active duty payroll.

(B) The accrued actuarial liability.

(C) The current value of assets in the Fund.

(D) The future Federal obligation.

(E) The net pay-as-you-go-cost.

(F) The unfunded actuarial liability, which shall be computed as the difference between the accrued actuarial liability and the sum of the current value in the assets of the Fund and the future Federal obligation.

(G) The amount equal to the difference between (i) the accrued actuarial liability as of January 2, 1975 (in future value as of the end of the fiscal year for which the determination is made), and (ii) the sum of the future Federal obligation, the current value of previous Federal contributions, and (in the case of the District of Columbia Teachers' Retirement Fund and the District of Columbia Judges' Retirement Fund) the current value of any assets in the predecessor to such Fund as of January 2, 1975, which amount is the difference between the amount that the Federal Government would pay to the Fund if the Federal Government had assumed the funding responsibility for all accrued unfunded liabilities as of January 2, 1975, and the amount actually to be paid by the Federal Government.

For the purposes of subparagraph (F), the term “current value of the assets in the Fund” shall be deemed to include (i) the present value of any payments to be made to the Fund by the District in accordance with subsection (b) (1) (C) (i), and (ii) the present value of the amount of any reduction in the amount of future District payments to the Fund determined in accordance with subsection (b) (1) (D).

(4) The Board shall determine—

(A) the amount of the Federal payment for the next fiscal year for each Fund authorized to be appropriated under section 1-1824 (a); and

(B) on the basis of the most recent certification submitted by the enrolled actuary under paragraph (3), the amount of the District payment for the next fiscal year for each Fund, as described under subsection (b).

(b) (1) (A) For the District payment for each Fund for each fiscal year through fiscal year 2004, the Board shall determine —

(i) the unfunded actuarial liability for such Fund as of the end of fiscal year 2004;

(ii) the unfunded actuarial liability as of October 1, 1979, in future value as of the end of fiscal year 2004 for such Fund; and

(iii) the amount equal to the lesser of (I) the net pay-as-you-go cost, and (II) the sum of the net normal cost and the amount of annual interest (computed at the valuation rate used in the determination under subsection (a) (1)) on the unfunded actuarial liability, as computed under subsection (a) (3) (F).

(B) If the amount determined under subparagraph (A) (i) is equal to the amount determined under subparagraph (A) (ii), the amount of the District payment for the fiscal year for such Fund shall be the amount determined under subparagraph (A) (iii).

(C) (i) If the amount determined under subparagraph (A) (i) is greater than the amount determined under subparagraph (A) (ii), the amount of the District payment for the fiscal year for such Fund shall be the amount equal to the sum of (I) the amount determined under subparagraph (A) (iii), and (II) the amount of the level amortization payment that, if paid annually into the Fund through the next ten fiscal years (and accrued at the rate of interest used in the determinations under subsection (a) (1)), would reduce the amount determined under subparagraph (A) (i) to the amount determined under subparagraph (A) (ii) by the end of such ten fiscal years.

(ii) A level amortization payment shall not be required under this subparagraph for any fiscal year to the extent that the difference between the amount determined under subparagraph (A) (i) and the amount determined under subparagraph (A) (ii) for such fiscal year is attributable to the failure of the Federal Government (other than a failure because of section 1-1824 (d) or 1-1825) to make all or any part of the Federal payment to such Fund for any fiscal year.

(D) If the amount determined under subparagraph (A) (ii) is greater than the amount determined under subparagraph (A) (i), the amount of the District payment for such Fund shall be the amount determined under subparagraph (A) (iii) reduced by the amount of the level amortization payment that, if paid annually for the next ten fiscal years, would have a future value as of the end of fiscal year 2004 equal to the difference between the amount determined under subparagraph (A) (ii) and the amount determined under subparagraph (A) (i).

(E) The amount of a District payment determined under subparagraph (C) may not exceed the amount determined under subparagraph (A) (iii) by more than 10 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, or by more than 30 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Teachers' Retirement Fund or to the District of Columbia Judges' Retirement Fund.

(F) Determinations under subparagraph (A) shall be made in accordance with generally accepted actuarial principles and practices.

(2) The amount of the District payment to each Fund for fiscal year 2005 and for each fiscal year thereafter shall be the sum of (A) the net normal cost, and (B) the amount of annual interest (computed at the valuation rate used in the determination pursuant to subsection (a) (1)) on the unfunded actuarial liability.

(c) (1) On the basis of the most recent determinations made under subsection (a) (4), the Board shall —

(A) not later than March 15 of each year through calendar year 2003, submit to the President and to the Congress a request for appropriation of the Federal payment for the next fiscal year for each Fund; and

(B) not less than thirty days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under section 47-221 (a), certify to the Mayor and the Council the amount of the District payment for each Fund.

(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to section 47-221 (a), and the Council of the District of Columbia, in adopting each annual budget in accordance with section 47-224, shall include in such budget not less than the full amount certified by the Board under paragraph (1) (B) as being the amount of the District payment for the next fiscal year for each Fund. The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Board.

(d) (1) Whenever any change in benefits under a retirement program is made, the Mayor shall engage an enrolled actuary, who may be the enrolled actuary engaged pursuant to section 1-1832 (a) (4) (A) to estimate the effect of such change in benefits over the next five fiscal years on (A) the net normal cost percentage with respect to the retirement program, (B) the accrued actuarial liability with respect to the retirement program, (C) the net pay-as-you-go cost with respect to the retirement program, and (D) the level of the District payments to the Fund. The Mayor shall transmit the estimates of the actuary under the preceding sentence to the Board and to the Speaker and the President pro tempore, and such change in benefits may not go into effect until the end of the thirty-day period beginning on the date such transmittals are completed.

(2) In the event a change in benefits under a retirement program is made that increases the present value of benefits payable from the Fund, a level amortization payment for a period not to exceed twenty-five years shall be paid by the District to the Fund such that the present value of the sum of such level amortization payments equals the increase in the present value of such benefits. Such payments shall be made in addition to any other payment to the Fund required to be made by the District, and such increase in present value of benefits payable from the Fund and such payments shall be disregarded in calculating the unfunded actuarial liability under subsection (b) (1) (A).

(e) Whenever the amount authorized to be appropriated to the District of Columbia Police Officers and Fire Fighters' Retirement Fund for any fiscal year under section 1-1824 (a) (1) is reduced under section 1-1825 (c), the District shall, beginning with the next fiscal year, pay a level amortization payment to such Fund for a period not to exceed ten years such that the present value (determined as of the beginning of the fiscal year for which such authorization is reduced) of the sum of such level amortization payments equals the amount of such reduction. Such payments shall be made in addition to any other payment to such Fund required to be made by the District and shall be disregarded in calculating the unfunded actuarial liability under subsection (b) (1) (A).

(f) The Comptroller General of the United States shall have access to all books, accounts, records, reports, files and other papers necessary to carry out the responsibility of the Comptroller General under section 47-120-1 and under section 1-1824 (e). (Nov. 17, 1979, Pub. L. 96-122, § 142, 93 Stat. 866.)

Section referred to in sections. 1-1802, 1-1823, 1-1824, 1-1825, 1-1832, 4-523.

§ 1-1823. Information about retirement programs.

Upon a request of the Board, the Mayor shall furnish to the Board such information with respect to retirement programs to which this chapter applies as the Board considers necessary to enable it to carry out its responsibilities under this chapter and to enable the enrolled actuary engaged pursuant to section 1-1822 (a) to carry out the responsibilities of the enrolled actuary under this chapter. (Nov. 17, 1979, Pub. L. 96-122, § 143, 93 Stat. 866.)

§ 1-1824. Federal and District of Columbia payments to the Funds.

(a) There is authorized to be appropriated from the revenues of the United States for fiscal year 1980 and for each fiscal year thereafter through fiscal year 2004 —

(1) as the Federal payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, the sum of \$34,170,000, reduced by the amount of any reduction required under section 1-1825 (c);

(2) as the Federal payment to the District of Columbia Teachers' Retirement Fund, the sum of \$17,680,000; and

(3) as the Federal payment to the District of Columbia Judges' Retirement Fund, the sum of \$220,000.

(b) (1) Amounts appropriated as a Federal payment to a Fund established by this chapter shall not be subject to apportionment and shall be deposited in the appropriate Fund not more than thirty days after they are appropriated or thirty days after the beginning of the fiscal year for which they are appropriated, whichever is later.

(2) Amounts appropriated as a District of Columbia payment to a Fund established by this chapter shall be deposited in the appropriate Fund in equal quarterly installments, the first of which shall be made on the first day of the first quarter of the fiscal year, or on the first day thereafter that funds for such installment become available, and the remainder of which shall be made on the first day of succeeding quarters of the fiscal year, or on the first day thereafter that funds for such installments become available.

(c) If at any time the balance of any Fund established by this chapter is not sufficient to meet all obligations against such Fund, such Fund shall have a claim on the revenues of the District of Columbia to the extent necessary to meet such obligations.

(d) If, for any fiscal year, the Mayor and the Council do not carry out the requirements of subsections (c) (2), (d), and (e) of section 1-1822 with respect to a Fund, no funds authorized to be appropriated for such Fund by this section shall be available for such Fund for such fiscal year.

(e) (1) In the year 2004, the Comptroller General shall determine whether the Federal share with respect to each Fund has been paid in full by payments made pursuant to appropriations authorized under subsection (a) of this section and, in the case of the District of Columbia Police Officers and Fire Fighters' Retirement Fund, by payments made or to be made under section 1-1822 (e).

(2) For the purposes of this subsection, the term "Federal share", with respect to a retirement program, means the sum of —

(A) 80 percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon the years of creditable service of the participant (and for the beneficiaries of such participants under the retirement program); and

(B) $33\frac{1}{3}$ percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon a disease or disability from which the participant is suffering (and for the beneficiaries of such participants under the retirement program).

(Nov. 17, 1979, Pub. L. 96-122, § 144, 93 Stat. 866.)

Section referred to in sections. 1-1822, 1-1825.

§ 1-1825. Reduction in Federal contribution for excessive cost of Police Officers and Fire Fighters' Disability Retirement.

(a) After January 1, and before March 1, of each year beginning with calendar year 1983 and ending with calendar year 2004, the enrolled actuary engaged pursuant to section 1-1822 shall, with respect to the District of Columbia Police Officers and Fire Fighters' Retirement Fund —

(1) determine the estimated present value (as of the date of the determination) of the cost to the Fund of the future benefits payable from such Fund for disability retirements under sections 4-526 (1) and 4-527 (1) to those officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who first became such officers or members on or before the end of the ninety-day period beginning on the date of the enactment of this chapter and who were not retired on the first day of the preceding calendar year;

(2) determine the estimated present value (as of the date of the determination) of the cost to the Fund of the benefits referred to in paragraph (1) determined as if such officers and members retire, had retired, or had to choose whether to retire under the provisions of section 4-526 (2) or 4-527 (5), as in effect on the day after the end of the ninety-day period beginning on the date of the enactment of this chapter, except that in making determinations under this paragraph, the enrolled actuary (A) shall not take into account reductions pursuant to section 4-530 (3), and (B) shall take into account such factors as the actuary considers to be appropriate and in accordance with sound actuarial practice in order to eliminate age-specific or other bias; and

(3) state whether, in accordance with sound actuarial practice, the ratio of the amount determined under paragraph (1) to the amount determined under paragraph (2) can be said to be greater than 1.02.

The enrolled actuary shall report the determinations and statements made under paragraphs (1) through (3) for any year to the Board and to the Comptroller General of the United States not later than March 1 of such year.

(b) (1) The Board and the Comptroller General shall each transmit a copy of each report by the enrolled actuary under subsection (a) to the Speaker, the President pro tempore, the Mayor, and the Council not later than March 31 of the year in which the report is made, and each shall submit comments on such report.

(2) The Comptroller General shall include in his comments on each such report transmitted under paragraph (1) a statement of whether the determinations and statement made by the enrolled actuary under subsection (a) were made in conformance with generally accepted actuarial practices and principles and whether such determinations and statements fairly present in all material respects the amounts described in paragraphs (1) and (2) of such subsection.

(c) Notwithstanding any other provision of this chapter, with respect to the fiscal year commencing in any calendar year in which a report of the enrolled actuary under subsection (a), as transmitted to the Congress in accordance with subsection (b), includes a statement by the enrolled actuary under paragraph (3) of subsection (a) that the ratio of the estimates determined under paragraphs (1) and (2) of such subsection is greater than 1.02, the amount authorized by section 1-1824 (a) (1) to be appropriated to the Fund for such fiscal year shall be reduced. Such reduction shall be an amount equal to the product of (1) the amount specified in such section, and (2) the ratio of (A) the number of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who retired during the preceding calendar year under sections 4-526 (1) and 4-527 (1) to (B) the number of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who first became such members prior to the end of the ninety-day period beginning on the date of the enactment of this chapter and who retired, died, withdrew by taking out a lump-sum payment, or separated from active duty while eligible for a deferred annuity under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.) during such year.

(d) (1) Notwithstanding any provision of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.) or any other provision of this chapter, in any case in which any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia retires during calendar year 1979 or any subsequent calendar year through calendar year 2001 under section 4-526 (1) or 4-527 (1), the Board of Police and Fire Surgeons shall determine, within a reasonable time and in accordance with regulations which the Mayor shall promulgate, the percentage of impairment of such officer or member and shall report such percentage of impairment to the Police and Firemen's Retirement and Relief Board. In the case of such officer or member, such Board shall determine, within a reasonable time, the percentage of disability of such officer or member giving due regard to —

- (A) the nature of the injury or disease;
- (B) the percentage of impairment reported pursuant to the preceding sentence;
- (C) the position in the Metropolitan Police force or the Fire Department of the District of Columbia held by the officer or member immediately prior to such officer or member's retirement;
- (D) the age and years of service of the officer or member; and
- (E) any other factor or circumstance which may affect the capacity of the officer or member to earn wages or engage in gainful activity in his disabled condition, including the effect of the disability as it may naturally extend into the future.

(2) The Police and Firemen's Relief Board, on or before January 31 of each calendar year from 1980 through 2002, shall make available to the Comptroller General and the enrolled actuary all determinations (including related documents and information) made during the preceding calendar year pursuant to paragraph (1) of this subsection in order to enable the Comptroller General and the enrolled actuary to make the determinations and statement required by this section.

(Nov. 17, 1979, Pub. L. 96-122, § 145, 93 Stat. 866.)

Section referred to in sections. 1-1822, 1-1824.

Subchapter IV. — Reporting and Disclosure Requirements

§ 1-1831. Personal financial disclosure by Board members.

(a) Each member of the Board shall, within ninety days of his selection as a member of the Board and not later than April 30 of each year thereafter, submit to the Mayor, the Council, the Speaker, and the President pro tempore a personal financial disclosure statement with respect to the preceding calendar year. Such statement shall be in such form as the Council may by regulation require and shall contain such information with respect to the member's financial condition as the Council may by regulation require, including the following information:

(1) The amount and source of all income (as defined in section 61 of the Internal Revenue Code of 1954) received during the year.

(2) The identity and category of value of each liability owned, directly or indirectly, that exceeds \$2,500 as of the last day of the year (excluding any mortgage that secures real property that is the principal residence of such member).

(3) The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income that has a fair market value of not less than \$1,000 as of the last day of the year.

(4) The identity and category of value of any transaction, whether direct or indirect, in securities or commodities futures during the year in excess of \$1,000 (excluding any gift to any tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1954), and the identity, date, and category of value of any purchase or sale, whether direct or indirect, of any interest in real or tangible personal property during the year the value of which exceeds \$1,000 at the time of such purchase or sale (excluding any purchase or sale of any property that is the principal residence of such member or that is used as furnishings for such principal residence).

(5) The nature and extent of any interest during the year in any bank, insurance company, or other financial institution, or in any brokerage or other securities or investment company.

(6) The nature and extent of any employment during the year by any bank, insurance company, or other financial institution, or by any brokerage or other securities or investment company.

A member shall not be required to submit a personal financial disclosure statement to the Speaker and the President pro tempore for calendar years after calendar year 2004.

(b) For purposes of paragraphs (2), (3), and (4) of subsection (a), the member reporting need not specify the actual amount of value of each item required to be reported under such

paragraphs, but shall indicate which of the following categories such amount or value is within:

- (1) Not more than \$5,000.
- (2) Greater than \$5,000 but not more than \$15,000.
- (3) Greater than \$15,000 but not more than \$50,000.
- (4) Greater than \$50,000 but not more than \$100,000.
- (5) Greater than \$100,000.

(Nov. 17, 1979, Pub. L. 96-122, § 161, 93 Stat. 866.)

§ 1-1832. Annual reports.

(a) (1) (A) The Board shall publish an annual report for each fiscal year (beginning with fiscal year 1980) with respect to each retirement program to which this chapter applies and with respect to the Fund for such retirement program. Such report shall be filed with the Mayor, the Council, the Speaker, and the President pro tempore in accordance with section 1-1834 (a) and shall be made available and furnished to participants and beneficiaries in accordance with section 1-1834 (b).

(B) The annual report shall include the information described in subsections (b), (c), (d), and (e) and, when applicable, subsection (f), and shall also include —

- (i) the financial statement and opinion required by paragraph (3) of this subsection; and
- (ii) the actuarial statement and opinion required by paragraph (4) of this subsection.

(2) If some or all of the information needed to enable the Board to comply with the requirements of this chapter is maintained by —

(A) an insurance carrier or other organization which provides some or all of the benefits under the retirement program, or holds assets of the Fund for such retirement program in a separate account;

(B) a bank or similar institution which holds some or all of the assets of the Fund in a common or collective trust or a separate trust, or custodial account; or

(C) the Mayor (or the Police and Firemen's Retirement and Relief Board, established pursuant to section 4-533a, in carrying out the Mayor's responsibilities under the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.));

such carrier, organization, bank, or institution, or the Mayor, shall transmit and certify the accuracy of such information to the Board within one hundred and twenty days after the end of the fiscal year (or such other date as may be prescribed under regulations of the Board).

(3) (A) Except as provided in subparagraph (C), the Board shall engage an independent qualified public accountant who shall conduct such examination of any financial statements of the Fund, and of other books and records of the Fund or the retirement program, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the Fund and the retirement program as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b) (2) of this section and the summary material required under section 1-1834 (b) (2) present fairly, and in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountants shall be made a part of the annual report.

(B) In offering his opinion under this section, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b) (2) (G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(4) (A) The Board shall engage an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section —

(i) are in the aggregate reasonably related to the experience of the Fund and the retirement program and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the Fund and the retirement program.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) In making a certification under this section, the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) as to which any qualified public accountant has expressed an opinion if he so states his reliance.

(b) (1) An annual report under this section shall include a financial statement containing a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the retirement program, which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: A description of the retirement program, including any significant changes in the retirement program made during the period and the impact of such changes on benefits; the funding policy (including the policy with respect to prior service cost), and any changes in such policy during the year; a description of any significant changes in benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; and any other matters necessary to fully and fairly present the financial statements of the Fund.

(2) The statement required under paragraph (1) shall have attached the following information in separate schedules:

(A) A statement of the assets and liabilities of the Fund, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year.

(B) A statement of receipts in and disbursements from the Fund during the preceding twelve-month period, aggregated by general source and application.

(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value.

(D) A schedule of each transaction involving a person known to be a party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the Fund, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(E) A schedule of all loans or fixed income obligations which were in default as of the close of the fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): The original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof.

(F) A list of all leases which were in default or were classified during the year as uncollectable and the following information with respect to each lease on such list (including a

notation as to whether parties involved are known to be parties in interest): The type of property leased (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the property); the identity of the lessor or lessee from or to whom the Fund is leasing; the relationship of such lessors and lessees, if any, to the Fund, the government of the District of Columbia, any employee organization, or any other party in interest; the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost; the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default.

(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Fund are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Fund are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Fund are held, and in the case of a separate account or a separate trust, such other information as may be required by the Board in order to comply with this subsection.

(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(3) For purposes of subparagraph (H) of paragraph (2), the term “reportable transaction” means a transaction to which the Fund is a party and which is —

(A) a transaction involving an amount in excess of 3 percent of the current value of the assets of the Fund;

(B) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the Fund;

(C) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the fiscal year exceeds 3 percent of the current value of the assets of the Fund; or

(D) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A).

(c) The Board shall furnish as a part of an annual report under this section the following information:

(1) The number of individuals covered by the retirement program.

(2) The name and address of each member of the Board.

(3) Except in the case of a person whose compensation is minimal (as determined under regulations of the Council, which regulations the Council shall initially promulgate within ninety days after the date of the enactment of this chapter) and who performs solely ministerial duties as determined under such regulations), the name of each person (including any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment counsel, or custodian who rendered services to the Board or who had transactions with the Board) who directly or indirectly received compensation from the Board during the preceding year for services rendered to the Board or the participants or beneficiaries of the retirement program for which a Fund was established, the amount of such compensation, the nature of his services, his relationship, if any, to the District of Columbia government or any employee organization, and any other officer, position or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of any accountant, insurance carrier, enrolled actuary, or investment counsel appointed by the Board.

(5) Such other financial and actuarial information as the Council may by regulation prescribe.

(d) An annual report under this section for a fiscal year shall include a complete actuarial statement applicable to the fiscal year which shall include the following information:

(1) The date of the actuarial valuation applicable to the fiscal year for which the report is filed.

(2) The date and amount of the payments to the Fund for the fiscal year for which the report is filed and contributions for prior fiscal years not previously reported, including payments by the participants, the United States, and the District of Columbia.

(3) The following information applicable to the fiscal year for which the report is filed:

(A) The amounts determined under section 1-1822 (a) (1).

(B) The accrued liabilities.

(C) An identification of benefits not included in the calculation.

(D) A statement of the other facts and actuarial assumptions and methods used to determine costs.

(E) A justification for any change in actuarial assumptions or cost methods.

(4) The number of participants and beneficiaries covered by the retirement program.

(5) A certification of the amount of the payments to the Fund necessary to reduce the accumulated funding deficiency to zero.

(6) A statement by the enrolled actuary of any change in actuarial assumptions made with respect to the Fund during the year.

(7) A statement by the enrolled actuary of the estimated current value of vested benefits under the retirement program.

(8) A statement by the enrolled actuary that to the best of his knowledge the report is complete and accurate.

(9) A copy of the opinion required by subsection (a) (4).

(10) Such other information regarding the retirement program as the Council may by regulation require.

(11) Such other information as the enrolled actuary may determine is necessary to fully and fairly disclose the actuarial position of the Fund.

The actuary shall make an actuarial valuation of the Fund for every third fiscal year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a) (4) of this section.

(e) A report under this section for a fiscal year shall include a statement prepared by the Board of —

(1) the relative riskiness of the investments during the fiscal year of the assets of the Fund;

(2) a comparison of the average return on the investments of the Fund during the year with the average return on the investments of other public pension funds during the year that have comparable asset valuation; and

(3) the average daily balance of, and the average rate earned by, assets of the Fund in each of any time or demand deposits during the year.

(f) If some or all of the benefits under the retirement program are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating —

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any

amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose.

If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include, in lieu of the information required by paragraph (2), a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the Fund, and a copy of the financial report of the company, service, or other organization and, if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular Fund or Funds, a detailed statement of such costs. (Nov. 17, 1979, Pub. L. 96-122, § 162, 93 Stat. 866.)

Section referred to in sections. 1-1822, 1-1834.

§ 1-1833. Retirement program summary description.

(a) (1) A summary description of each retirement program to which this chapter applies shall be furnished to participants and beneficiaries as provided in section 1-1834 (b). The summary description shall include the information specified in subsection (b) of this section, shall be written in a manner calculated to be understood by the average participant or beneficiary, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the retirement program.

(2) A summary of any material modification in the terms of the retirement program and any change in the information required under subsection (b), written in a manner calculated to be understood by the average participant or beneficiary, shall be furnished in accordance with section 1-1834 (b) (1).

(b) Each summary description of a retirement program shall contain the following information: The name and type of administration of the retirement program; the name and address of the chairman of the Board, who shall be the agent of the Board for the service of legal process; the name, title, and address of each member of the Board; a description of the relevant provisions of applicable collective-bargaining agreements; the retirement program's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the identity of any organization through which benefits are provided; the procedures to be followed in presenting claims for benefits under the retirement program; and the remedies available under the retirement program for the redress of claims that are denied in whole or in part. (Nov. 17, 1979, Pub. L. 96-122, § 163, 93 Stat. 866.)

Section referred to in section. 1-1834.

§ 1-1834. Filing reports and furnishing information to participants.

(a) (1) The Board shall file with the Mayor, the Council, the Speaker, and the President pro tempore —

(A) the annual reports for a fiscal year within two hundred and ten days after the end of such year;

(B) a copy of each summary description of a retirement program within one year after the date of the enactment of this chapter; and

(C) a revised summary description of a retirement program, incorporating any material modification in the terms of the retirement program, within sixty days after such modification is adopted or occurs.

The Mayor shall make copies of such retirement program descriptions and annual reports available for public inspection in an appropriate location. The Board shall also furnish to the Mayor, the Council, the Speaker, and the President pro tempore, upon request, any documents

relating to the retirement program or the Fund, including any bargaining agreement, trust agreement, contract, or other instrument under which the retirement program or Fund is operated.

(2) (A) The Mayor or the Council may reject any filing under this section within thirty days of such filing —

(i) upon determining that such filing is incomplete for purposes of this chapter; or

(ii) upon determining that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1-1832 (a) (3) (A) or section 1-1832 (a) (4) (B).

(B) If the Mayor or the Council rejects a filing of a report under subparagraph (A), and if a revised filing satisfactory to the Mayor or the Council is not submitted within forty-five days after the determination under subparagraph (A) to reject the filing is made, and if the Mayor or the Council considers it in the best interest of the participants, then the Mayor or the Council may take any one or more of the following actions:

(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit.

(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

(iii) Bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this chapter.

The Board shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund are necessary for such audit.

(3) (A) Either House of Congress may reject any filing under this section within thirty days of such filing by adopting a resolution stating that such House has determined —

(i) that such filing is incomplete for purposes of this chapter; or

(ii) that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1-1832 (a) (3) (A) or section 1-1832 (a) (4) (B).

(B) If either House of Congress rejects a report under subparagraph (A) and if either a revised filing is not submitted within forty-five days after adoption of the resolution under subparagraph (A) rejecting the initial filing or such revised filing is rejected by either House of Congress by adoption of a resolution within thirty days after submission of the revised filing, then either House of Congress may, if it deems it in the best interests of the participants, take any one or more of the following actions:

(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit.

(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

The Board and the Mayor shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund and the retirement program are necessary for performing such audit or preparing such statement.

(C) If a revised filing is rejected under subparagraph (B) or if a filing required under this chapter is not made by the date specified, no funds appropriated for the Fund with respect to which such filing was required as part of the Federal payment may be paid to the Fund until such time as an acceptable filing is made. For purposes of this subparagraph, a filing is unacceptable if, within thirty days of its submission, either House of Congress adopts a resolution disapproving such filing.

(b) Publication of the summary retirement program descriptions and annual reports shall be made to participants and beneficiaries as follows:

(1) The Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the summary retirement program description and all modifications and changes referred to in section 1-1833 (a) within ninety days after he becomes a participant or in the case of a beneficiary, within ninety days after he first receives benefits. The Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, every fifth year an updated summary retirement program description

described in section 1-1833 which integrates all retirement program amendments made within such five-year period, except that in a case where no amendments have been made to a retirement program during such five-year period this sentence shall not apply. Notwithstanding the foregoing sentence, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, the summary retirement program description described in section 1-1833 every tenth year. If there is a modification or change described in section 1-1833 (a) a summary description of such modification or change shall be furnished to each participant and to each beneficiary who is receiving benefits under the retirement program not later than two hundred and ten days after the end of the fiscal year in which the change is adopted.

(2) The Board shall make copies of the latest annual report and of any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or the Fund is operated available for examination by any participant or beneficiary in the principal office of the Board and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Council may by regulation prescribe).

(3) Within two hundred and ten days after the close of the fiscal year, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the statements and schedules described in subparagraphs (A) and (B) of section 1-1832 (b) (2) for such fiscal year and such other material as is necessary to fairly summarize the latest annual report.

(4) The Board shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary retirement program description, the latest annual report, and any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or Fund is operated. The Board may make a reasonable charge to cover the cost of furnishing such copies. The Council may by regulation prescribe the maximum amount that will constitute a reasonable charge under the preceding sentence.

(c) The Council may by regulation require that the Board furnish to each participant and to each beneficiary receiving benefits under a retirement program a statement of the rights of participants and beneficiaries under this chapter. (Nov. 17, 1979, Pub. L. 96-122, § 164, 93 Stat. 866.)

Section referred to in sections. 1-1832, 1-1833.

§ 1-1835. Reporting of participants' benefit rights.

(a) The Board shall furnish to any participant or beneficiary who so requests in writing a statement indicating, on the basis of the latest available information —

(1) the total benefits accrued, and

(2) the nonforfeitable retirement benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) A participant or beneficiary is not entitled to receive more than one report under subsection (a) during any twelve-month period. (Nov. 17, 1979, Pub. L. 96-122, § 165, 93 Stat. 866.)

Section referred to in sections. 1-1836, 1-1839.

§ 1-1836. Public information.

(a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Mayor, the Council, the Speaker, and the President pro tempore pursuant to this part shall be public information, and the Mayor, the Council, the Speaker, and the President pro tempore shall each make such documents available for inspection in an appropriate location. The Mayor, the Council, the Speaker, and the President pro tempore may use the information and data in such documents for statistical and research purposes and may compile and publish such studies, analyses, reports, and surveys based thereon as may be considered appropriate.

(b) Information described in section 1-1835 (a) with respect to a participant or beneficiary of a retirement program may be disclosed only to the extent that information respecting that participant's or beneficiary's benefits under title II of the Social Security Act may be disclosed under such Act.

(c) Except to the extent that information which is protected from public disclosure under subsection (b), or which relates to personnel matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is involved, all meetings of the Board shall be open to the public. (Nov. 17, 1979, Pub. L. 96-122, § 166, 93 Stat. 866.)

Section referred to in section. 1-1837.

§ 1-1837. Retention of records.

The Board shall maintain records on the matters required to be disclosed by this chapter which will provide in sufficient detail the necessary basic information and data from which the required documents may be verified, explained, or clarified, and checked for accuracy and completeness, shall include vouchers, worksheets, receipts, and applicable resolutions in such records, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain. Except to the extent that information is involved which is protected from public disclosure under section 1-1836 (b), all such records shall be available for inspection by the public. (Nov. 17, 1979, Pub. L. 96-122, § 167, 93 Stat. 866.)

§ 1-1838. Additional information.

(a) In addition to the information specifically required to be furnished by this subchapter, the Board shall furnish promptly such additional information as the Mayor, the Council, the Speaker, or the President pro tempore may request.

(b) The Board shall, at regular intervals to be determined by the Board, compile and publish all regulations then in effect which were issued by the Board or the Council under this chapter. (Nov. 17, 1979, Pub. L. 96-122, § 168, 93 Stat. 866.)

Section referred to in section. 1-1839.

§ 1-1839. Criminal penalties.

Whoever willfully violates any provision of this subchapter (other than sections 1-1835 and 1-1838), or any regulation or order issued under any such provision, shall be fined not more than \$5,000 or imprisoned not more than one year, or both, except that in the case of such a violation by a person not an individual, such person shall be fined not more than \$100,000. (Nov. 17, 1979, Pub. L. 96-122, § 169, 93 Stat. 866.)

Subchapter V. — Fiduciary Responsibility; Civil Sanctions

§ 1-1841. Fiduciary responsibilities.

(a) (1) The Board and each member of the Board shall discharge responsibilities with respect to a Fund as a fiduciary with respect to such Fund. The Board may designate one or more other persons who exercise responsibilities with respect to a Fund to exercise such responsibilities as a fiduciary with respect to such Fund. The Board shall retain such fiduciary responsibility for the exercise of careful, skillful, prudent, and diligent oversight of any person so designated as would be exercised by a prudent individual acting in a like capacity and familiar with such matters under like circumstances.

(2) A fiduciary shall discharge his duties with respect to a Fund solely in the interest of the participants and beneficiaries and —

(A) for the exclusive purpose of providing benefits to participants and their beneficiaries;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the provisions of law, documents, and instruments governing the retirement program to the extent that such documents and instruments are consistent with the provisions of this chapter.

(b) In addition to any liability which he may have under any other provision of this subchapter, a fiduciary with respect to a Fund shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same Fund —

(1) if he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach of fiduciary responsibility;

(2) if, by his failure to comply with subsection (a) (2) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach of fiduciary responsibility; or

(3) if he has knowledge of a breach of fiduciary responsibility by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(c) Except as provided in subsection (f), a fiduciary with respect to a Fund shall not cause the Fund to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect —

(1) sale or exchange, or leasing, of any property between the Fund and a party in interest;

(2) lending of money or other extension of credit between the Fund and a party in interest;

(3) furnishing of goods, services, or facilities between the Fund and a party in interest; or

(4) transfer to, or use by or for the benefit of, a party in interest, of any assets of the Fund.

(d) A fiduciary with respect to a Fund shall not —

(1) deal with the assets of the Fund in his own interest or for his own account;

(2) in his individual or in any other capacity act in any transaction involving the Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Fund or the interests of its participants or beneficiaries; or

(3) receive any consideration for his own personal account from any party dealing with such Fund in connection with a transaction involving the assets of the Fund.

(e) A transfer of real or personal property by a party in interest to a Fund shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the Fund assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the ten-year period ending on the date of the transfer.

(f) The prohibitions provided in subsection (c) shall not apply to any of the following transactions:

(1) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Fund, if no more than reasonable compensation is paid therefor.

(2) The investment of all or part of a Fund's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such Fund and if such investment is expressly authorized by regulations of the Board or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the Board to make such investment.

(3) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State if such bank or other institution is a fiduciary of such Fund and if —

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Mayor after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of the retirement program. Such ancillary services shall not be provided at more than reasonable compensation.

(4) The exercise of a privilege to convert securities, to the extent provided in regulations of the Council, but only if the Fund receives no less than adequate consideration pursuant to such conversion.

(5) Any transaction between a Fund and a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency, or a pooled investment fund of an insurance company qualified to do business in a State, if —

(A) the transaction is a sale or purchase of an interest in the Fund;

(B) the bank, trust company, or insurance company receives not more than reasonable compensation; and

(C) such transaction is expressly permitted by the Board, or by a fiduciary (other than the bank, trust company, insurance company, or an affiliate thereof) who has authority to manage and control the assets of the Fund.

(g) Nothing in subsection (c) shall be construed to prohibit any fiduciary from —

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement program, so long as the benefit is computed and paid on a basis which is consistent with the terms of the retirement program as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with respect to the Fund; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(Nov. 17, 1979, Pub. L. 96-122, § 181, 93 Stat. 866.)

§ 1-1842. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a Fund who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this chapter shall be personally liable to make good to such Fund any losses to the Fund resulting from each such breach and to restore to such Fund any profits of such fiduciary which have been made through the use of assets of the Fund by the fiduciary and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this chapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary. (Nov. 17, 1979, Pub. L. 96-122, § 182, 93 Stat. 866.)

Section referred to in section. 1-1847.

§ 1-1843. Exculpatory provisions; insurance.

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void as against public policy.

(b) Nothing in this section shall preclude —

(1) the Board from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to the Fund from which the annuities and other retirement and disability benefits of the members of such employee organization are paid.

(Nov. 17, 1979, Pub. L. 96-122, § 183, 93 Stat. 866.)

§ 1-1844. Prohibition against certain persons holding certain positions.

(a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102 (6) of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. § 802 (6)) of 1970, murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in section 9 (a) (1) of the Investment Company Act of 1940 (15 U.S.C. § 80a-9 (a) (1)), a violation of any provision of this chapter, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. § 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 401), or conspiracy to commit any such crime or attempt to commit any such crime, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve —

(1) as a fiduciary, investment counsel, agent, or employee of any Fund established by this chapter; or

(2) as a consultant to any Fund established by this chapter; during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this chapter. Prior to making any such determination the Board of Parole shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board of Parole's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any Fund established by this chapter, or as a consultant to any Fund established by this chapter, without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Whoever willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and to be under the disability of "conviction" from the date of entry of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents a Fund or who provides other assistance to such Fund concerning the operation of such Fund.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(Nov. 17, 1979, Pub. L. 96-122, § 184, 93 Stat. 866.)

§ 1-1845. Bonding.

(a) (1) Each fiduciary of a Fund established by this chapter and each person who handles funds or other property of such a Fund (hereinafter in this section referred to as "Fund official") shall be bonded as provided in this section, except that no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary —

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Council, which amount shall be at least \$1,000,000.

Subparagraph (D) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation only if such bank or institution meets bonding or similar requirements under State law which the Council determines are at least equivalent to those imposed on banks by Federal law.

(2) (A) The amount of such bond shall be the lesser of 10 percent of the amount of the funds handled by such fiduciary and \$500,000, except that the amount of such bond shall be at least \$1,000.

(B) The Mayor, after notice and opportunity for hearing to such fiduciary and all other parties in interest to such Fund, may waive the \$500,000 limit.

(C) The amount of such bond shall be set at the beginning of each fiscal year.

(3) For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by the predecessor or predecessors, if any, during the preceding reporting year, or if the Fund has no preceding reporting year under this chapter, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations to be prescribed by the Council.

(4) Such bond shall provide protection to the Fund against loss by reason of acts of fraud or dishonesty on the part of the Fund official, directly or through connivance with others.

(5) Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Council, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any Fund official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any Fund without being bonded as required by subsection (a), and it shall be unlawful for any Fund official or any other person having authority to direct the performance of such functions to permit such functions, or any of them, to be performed by any Fund official with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations the Fund or any party in interest in the Fund has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person required to be bonded as provided in subsection (a) because he handles funds or other property of a Fund to be bonded insofar as the handling by such person of the funds or other property of such Fund is concerned.

(e) The Council shall prescribe such regulations as may be necessary to carry out the provisions of this section. (Nov. 17, 1979, Pub. L. 96-122, § 185, 93 Stat. 866.)

§ 1-1846. Limitation on actions.

No action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this subchapter, or with respect to a violation of this subchapter, after the earlier of —

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Mayor, the Council, the Speaker, or the President pro tempore under this chapter;

except that in the case of fraud or concealment, such an action may be commenced not later than six years after the date of discovery of such breach or violation. (Nov. 17, 1979, Pub. L. 96-122, § 186, 93 Stat. 866.)

§ 1-1847. Civil enforcement.

(a) A civil action may be brought —

(1) by a participant or beneficiary —

(A) for the relief provided for in subsection (b) of this section, or

(B) to recover benefits due to him under the terms of his retirement program, to enforce his rights under the terms of the retirement program, or to clarify his rights to future benefits under the terms of the retirement program;

(2) by a participant or beneficiary or the District of Columbia for appropriate relief under section 1-1842; or

(3) by a participant or beneficiary or the District of Columbia (A) to enjoin any act or practice which violates any provision of this chapter or the terms of a retirement program, or (B) to obtain other appropriate equitable relief (i) to redress any such violation, or (ii) to enforce any provision of this chapter or the terms of a retirement program.

(b) If the Board fails or refuses to comply with a request for any information which the Board is required by this chapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the Board) by mailing the information requested to the last known address of the requesting participant or beneficiary within thirty days after such request, then the Board may, in the court's discretion, be liable to such participant or beneficiary in an amount of up to \$100 a day from the date of such failure or refusal, and the court may order the Board to provide the required information and may in its discretion order such other relief as it considers proper.

(c) The Board may sue and be sued under this chapter as an entity. Service of summons, subpoena, or other legal process of a court upon the Chairman of the Board in his capacity as such shall constitute service upon the Board.

(d) In any action under this chapter by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party. (Nov. 17, 1979, Pub. L. 96-122, § 187, 93 Stat. 866.)

§ 1-1848. Claims procedure.

In accordance with regulations of the Council, the Mayor shall provide to any participant or beneficiary who has a claim for benefits under a retirement program denied —

(1) adequate written notice of such denial, setting forth the specific reasons for such denial in a manner calculated to be understood by such participant or beneficiary; and

(2) a reasonable opportunity for a full and fair review of the decision denying such claim. (Nov. 17, 1979, Pub. L. 96-122, § 188, 93 Stat. 866.)

TITLE 1.—ADMINISTRATION, APPENDIX

Compiler's note. Organization actions taken by the Mayor have heretofore been published in the appendix to Title 1 of this Code. However, the "District of Columbia Codification Act of 1975" (D.C. Law 1-19, title II, D.C. Code, sec. 1-1601 et seq.) as amended by D.C. Law 2-319,

requires the Mayor to compile and publish such actions. Accordingly, they no longer appear in the appendix to Title 1 of this Code.

Reorganization Plan No. 2 of 1975

Cited in Dupont Circle Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment (D.C. 1978, 390 A.2d 1009).

ORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA**Organization Order No. 127. — Committee on Employee Conduct**

(Organization Order No. 127 establishing the Committee on Employee Conduct was repealed by Mar. 3, 1979, D.C. Law 2-139, § 3205 (ccc), 25 DCR 5740.)

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

ORGANIZATION ORDERS OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA**Organization Order No. 38. — Commission on the Status of Women**

(Organization Order No. 38 establishing the Commission on the Status of Women was repealed by Sept. 22, 1978, D.C. Law 2-109, § 6, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

Compiler's note. Sec. 6 of D.C. Law 2-109, which repealed this order, provided that all personnel, property and records of and unexpended balances of appropriations

and other money available to the Commission on the Status of Women are transferred to the Commission established pursuant to D.C. Law 2-109.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

| Chap. | Sec. |
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CHAPTER 1.—HEALING ARTS PRACTICE

Subchapter I.—Licensure and Other
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Subchapter I.—Licensure and Other Regulatory Provisions

§ 2-103. Commission on Licensure — Establishment — Membership appointment — Term of office — Vacancies — Officers — Quorum — Removal — Compensation — Liability for damages — Regulations — Legal counsel — Continuation of prior Commission.

* * * * *

(f) Each member of the Commission appointed under paragraph (a) (1) may be paid pursuant to the provisions of section 1-341.8 devoted to Commission work, and may be reimbursed for necessary expenses not to exceed five thousand dollars in any one year.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(eee), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “pursuant to the provisions of section 1-341.8” for “at the rate of fifty dollars per day” in subsection (f).
Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2 (l) of the District of Columbia

Government Comprehensive Merit Personnel Act
Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 2-123. Professional misconduct or incapacity — Sanctions — Procedures and standards.

NOTES TO DECISIONS

Revocation of license held denial of due process. — Where District of Columbia Commission on Licensure to Practice the Healing Art failed to adopt properly a policy statement specifying the degree of supervision required to be exercised by a licensed physician over acupuncture technicians, the medical profession had not received adequate notice of that conduct which was proscribed, and the revocation of a physician's license for "misconduct" in

failing to supervise adequately the actions of the acupuncture technicians he employed denied the physician his due process rights. *Lewis v. District of Columbia Comm'n on Licensure to Practice Healing Art* (D.C. 1978, 385 A.2d 1148).

Cited in *Sherman v. Commission on Licensure to Practice Healing Art* (D.C. 1979, 407 A.2d 595).

CHAPTER 4.—NURSES, PHYSICAL THERAPISTS, AND PSYCHOLOGISTS

Subchapter I.—Registered Nurses

Sec.

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Subchapter V.—Occupational Therapists

- 2-499. Purpose.
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Subchapter I.—Registered Nurses

§ 2-408. Expenses to be paid from fees — Salary of executive secretary.

All expenses incident to the execution of the provisions of this subchapter shall be paid from fees collected (a) from schools of nursing, (b) from registration or reregistration of nurses, and (c) from the following services—

- (1) for repeat examinations of nurses;
- (2) for the evaluation of each high-school record of a candidate for admission to a school of nursing;
- (3) for verification of records;
- (4) for a duplicate certificate of registration upon proof acceptable to the nurses' examining board that the original certificate has been lost or destroyed;
- (5) for duplicate annual registration cards;
- (6) for mailing a certificate of registration a second time if no notification of change of address has been made; and

(7) for proctoring examination for out-of-State applicants when the examination is held at a time other than the regular examination of the District of Columbia. The fees referred to in clause (c) shall be reasonable fees fixed by the District of Columbia Council, subject to the approval of the Commissioner of the District of Columbia.

The executive secretary of said Board may receive a salary to be fixed by said Board at its annual organization meeting. (Feb. 9, 1907, 34 Stat. 889, ch. 913, § 9, as renumbered Mar. 2, 1929, 45 Stat. 1521, ch. 540, and amended July 2, 1945, 59 Stat. 315, ch. 224; Aug. 8, 1946, 60 Stat. 933, ch. 885, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(d), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting all the language which formerly appeared following “meeting” at the end of the section.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter IV.—Psychologists

§ 2-492. Procedure for suspension or revocation of license or certificate — Hearing — Review of decision.

NOTES TO DECISIONS

Cited in *Debruhl v. District of Columbia Hackers' License Appeal Bd.* (D.C. 1978, 384 A.2d 421).

Subchapter V.—Occupational Therapists

§ 2-499. Purpose.

In order to safeguard the public health, safety and welfare, to protect the public from being misled by incompetent, unscrupulous and unauthorized persons, to assure the highest degree of professional conduct on the part of occupational therapy assistants and to assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of this subchapter to provide for the regulation of persons offering occupational therapy services to the public. (Apr. 6, 1978, D.C. Law 2-67, § 2, 24 DCR 6815.)

Legislative History of Law 2-67. Law 2-67 was introduced in Council and assigned Bill No. 2-71, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. There being no action by the Mayor, it

was assigned Act No. 2-137 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Apr. 6, 1978, D.C. Law 2-67, provided: “That this act may be cited as the ‘District of Columbia Occupational Therapy Practice Act of 1977.’ ”

§ 2-499.1. Definitions.

As used in this subchapter:

(a) The term “Board” means the Board of Occupational Therapy Practice.

(b) The term “occupational therapy” means the evaluation and treatment of individuals whose ability to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability. The treatment utilizes task oriented activities to prevent or correct physical or emotional deficits on the individual, with special emphasis on the developmental and functional skills needed throughout life. Specific therapeutic and diagnostic techniques used in occupational therapy include, but are not limited to, self care and other activities of daily living, developmental oriented tasks, training in basic work habits, perceptual-motor and sensori-motor activities, prevocational evaluation and treatment, fabrication and application of splints, selection and use of adaptive equipment, and exercises and other modalities to enhance functional performance. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

(c) The term “occupational therapist” means a person licensed to practice occupational therapy as defined in this subchapter, and whose license is in good standing.

(d) The term “occupational therapy assistant” means a person licensed to assist in the practice of occupational therapy under the supervision or with the consultation of an occupational therapist, and whose license is in good standing.

(e) The term “occupational therapy aide” means a person who assists in the practice of occupational therapy, who works only under the direct supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but does not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy.

(f) The term “person” means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this subchapter.

(g) The term “Association” means the District of Columbia Occupational Therapy Association.

(Apr. 6, 1978, D.C. Law 2-67, § 3, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.2. License required.

No person shall practice occupational therapy in the District of Columbia or hold himself out as an occupational therapist or as an occupational therapy assistant, or as being able to practice occupational therapy or to render occupational therapy services in the District of Columbia, unless he is licensed in accordance with the provisions of this subchapter except as referred to in section 2-499.3. (Apr. 6, 1978, D.C. Law 2-67, § 4, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.3. Persons and practices not affected.

(a) Nothing in this subchapter shall be construed as preventing or restricting the practice, services, or activities of:

(1) any person employed as an occupational therapist or occupational therapy assistant by the federal government, if such person provides occupational therapy solely under the direction or control of the organization by which he is employed; or

(2) any person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program, if such activities and services constitute a part of a supervised course of study and if such person is designated by a title which clearly indicates his status as a student or trainer; or

(3) any person fulfilling the supervised field work experience requirements of section 2-499.6, if such activities and services constitute a part of the experience necessary to meet the requirements of that section; or

(4) any person employed by or working under the supervision of an occupational therapist as an occupational therapy aide; or

(5) any person performing occupational therapy services in the District of Columbia who is not licensed under this subchapter, if such services are performed for no more than ninety (90) days in a calendar year in association with an occupational therapist licensed under this subchapter, if such person meets the qualifications for license under this subchapter except for the Board’s qualifying examination; or

(6) any person performing occupational therapy services in the District of Columbia, who is not licensed under this subchapter, if such services are performed for no more than ninety (90) days in a calendar year in association with an occupational therapist licensed under this subchapter, if

(A) such person is licensed under the law of any state which has licensure requirements at least as stringent as the requirements of this subchapter, as determined by the Board; or

(B) such person meets the requirements for certification as an occupational therapist registered (OTR), or a certified occupational therapy assistant (COTA), established by the American Occupational Therapy Association.

(b) No provision of this subchapter shall be construed to prohibit physicians, nurses, physical therapists, osteopathic physicians, surgeons, or clinical psychologists from using occupational

therapy as a part of or incidental to their profession, when they practice their profession under the statutes applicable to their profession, provided no person shall hold himself out, or otherwise represent himself, as an occupational therapist. (Apr. 6, 1978, D.C. Law 2-67, § 5, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.
Section referred to in section. 2-499.2.

§ 2-499.4. Board of Occupational Therapy Practice: Establishment: Compensation.

(a) There shall be established in the District of Columbia the Board of Occupational Therapy Practice. The Board shall consist of at least seven (7) members appointed by the Mayor and approved by the Council. At least four (4) of the Board members shall be occupational therapists with three (3) years of experience as an occupational therapist and at least one (1) member shall be an occupational therapy assistant, and these members shall at all times be holders of valid licenses for the practice of occupational therapy in the District of Columbia except for the members of the first Board, all of whom shall fulfill the requirements for licensure of this subchapter. The remaining two (2) members shall be members of the health professions or members of the public with an interest in the rights of the consumers of health services.

(b) The Mayor shall, within sixty (60) days following the effective date of this subchapter, appoint three (3) Board members for a term of one (1) year; three (3) for a term of two (2) years; and one (1) for a term of three (3) years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members, who shall serve through the last calendar day of the year which they are appointed before commencing the terms prescribed by this section.

(c) Within thirty (30) days after the effective date of this subchapter, and annually thereafter, the Association and other interested persons may submit names to the Mayor for consideration for each of the seven (7) Board positions created by subsection (b) of this section. In the event of a mid-term Board vacancy, the Association and other interested persons may recommend the names of at least two (2) and not more than three (3) persons to fill that vacancy and the Mayor shall, as soon thereafter as practicable, select and appoint one (1) person to fill the unexpired term.

(d) The Board shall meet during the first month of each calendar year to select a chairperson and for other purposes. At least one (1) additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairperson or the written request of any two (2) Board members. A majority of the members of the Board shall constitute a quorum for all purposes. All meetings of the Board shall be open to the public, except that the Board may hold closed sessions to prepare, approve, grade, or administer examinations, or upon request of an applicant who fails an examination, to prepare a response indicating the reason for his failure.

(e) Members of the Board shall receive no compensation for their services, but shall be entitled to reasonable travel and other expenses incurred in the execution of their powers and duties. (Apr. 6, 1978, D.C. Law 2-67, § 6, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.5. Board of Occupational Therapy Practice: Powers and duties.

(a) The Board shall administer, coordinate, and enforce the provisions of this subchapter, evaluate the qualifications, and supervise the examinations of applicants for licensure under this subchapter, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this subchapter.

(b) The Board shall within three (3) months after the confirmation of the members of the first Board adopt rules and regulations relating to professional conduct and to the carrying out of the policy of this subchapter including, but not limited to, regulations relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in the District of Columbia, and may amend or repeal any rule or regulation of the Board. Such procedures shall be consistent with the contested case provisions of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1-1509), including reasonable notice and an opportunity for a hearing.

(c) The Board shall conduct such hearings and keep such records and minutes as are necessary to carry out its functions. The Board shall provide reasonable public notice to the appropriate persons of the times and places of all hearings authorized under this subchapter in such a manner and at such times as it may determine by its rules and regulations.

(d) The Board may utilize employees of the Department of Economic Development in the administration of this subchapter. (Apr. 6, 1978, D.C. Law 2-67, § 7, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.6. Requirements for licensure.

(a) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the Board, showing to the satisfaction of the Board that he:

(1) is of good moral character;

(2) has successfully completed the academic requirements of an educational program in occupational therapy recognized by the Board, with concentration in biological or physical science, psychology and sociology and with education in activity analysis (for an occupational therapist, such a program shall be accredited by the American Medical Association in collaboration with the American Occupational Therapy Association; for an occupational therapy assistant, such a program shall be approved by the American Occupational Therapy Association);

(3) has successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where he met the academic requirements (for an occupational therapist, a minimum of six (6) months of supervised field work experience is required; for an occupational therapy assistant, a minimum of two (2) months of supervised field work experience is required); and

(4) has passed an examination conducted by the Board as provided in section 2-499.7.

(b) An applicant who has practiced as an occupational therapy assistant for four (4) years, to include a minimum of six (6) months of supervised field work experience, may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under subsection (a) (2) of this section. (Apr. 6, 1978, D.C. Law 2-67, § 8, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.
Section referred to in sections. 2-499.3, 2-499.7, 2-499.8.

§ 2-499.7. Examination for licensure.

(a) Any person applying for licensure shall, in addition to demonstrating his eligibility in accordance with the requirements of section 2-499.6, make application to the Board for examination at least thirty (30) days prior to the date of examination, upon a form and in such a manner as the Board shall prescribe. Such application shall be accompanied by the fee prescribed by section 2-499.14, which fee shall not be refunded. A person who fails an examination may make application for a reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this subchapter shall be examined by the Board by a written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice. This examination will also

test the applicant's professional skills and judgment in the utilization of occupational therapy techniques and methods, and such other subjects as the Board may deem useful to determine the applicant's fitness to practice. The Board shall establish standards for acceptable performance.

(c) Applicants for licensure shall be examined at a time and place and under such supervision as the Board may determine. Examinations shall be given at least twice each year within the District of Columbia. The Board shall give reasonable public notice of such examinations in accordance with its rules at least sixty (60) days prior to their administration and shall notify by mail all individual examination applicants of the time and place of their administration.

(d) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the Board may establish. (Apr. 6, 1978, D.C. Law 2-67, § 9, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.
Section referred to in section. 2-499.6.

§ 2-499.8. Waiver of requirements for licensure.

(a) The Board shall waive the examination and grant a license to any person certified prior to the effective date of this subchapter as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American Occupational Therapy Association. The Board may waive the examination and grant a license to any person so certified after the effective date of this subchapter, if the Board considers the requirements for such certification to be equivalent to the requirements for licensure as set forth in this subchapter.

(b) The Board may waive the examination and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or an occupational therapy assistant in another state or territory of the United States which requires standards for licensure considered by the Board to be equivalent to the requirements for licensure as set forth in this subchapter.

(c) The Board shall waive the educational, experience, and examination requirements for licensure in sections 2-499.6 (a) (2) and 2-499.6 (a) (3) for applicants for licensure who present evidence to the Board that they have been engaged in the practice of occupational therapy on and prior to the effective date of this subchapter. Such proof of actual practice shall be presented to the Board in such a manner as it may prescribe by rule. To obtain the benefits of this waiver, an applicant shall file an application for a license no later than one (1) year from the effective date of this subchapter. (Apr. 6, 1978, D.C. Law 2-67, § 10, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.9. Issuance of license.

(a) The Board shall issue a license to any person who meets the requirements of this subchapter upon payment of the license fee prescribed.

(b) Any person who is issued a license as an occupational therapist under the terms of this subchapter may use the words "occupational therapist", "licensed occupational therapist", or "occupational therapist registered", or he may use the letters "O.T.", "L.O.T.", "O.T.R.", in connection with his name, or place of business to denote his registration hereunder.

(c) Any person who is issued a license as an occupational therapy assistant under the terms of this subchapter may use the words "occupational therapy assistant", "licensed occupational therapy assistant", or "certified occupational therapy assistant", or he may use the letters "O.T.A.", "L.O.T.A.", or "C.O.T.A.", in connection with his name, or place of business to denote his registration hereunder. (Apr. 6, 1978, D.C. Law 2-67, § 11, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.10. Limited permit.

Persons who have completed the educational and experience requirements, for an occupational therapist, or an occupational therapy assistant as set forth in this subchapter shall be allowed to practice occupational therapy under the supervision of an occupational therapist registered. This limited permit can be renewed only once until the date on which the results of the next qualifying examination have been made public. (Apr. 6, 1978, D.C. Law 2-67, § 12, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.11. Suspension and revocation of license: Refusal to renew.

(a) The Board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions where the licensee or applicant for license has been found by the Board to be in violation of professional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. The violation of such professional conduct may include:

(1) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) being in violation of professional conduct as defined in the rules established by the Board, or in violation of the Code of Ethics adopted and published by the Board; or

(3) being convicted of a crime other than minor offenses defined as “minor misdemeanor(s)”, “violation(s)”, or “offense(s)”, in any court if the acts for which he was convicted are found by the Board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant.

(b) A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a license under subsection (a) of this section may be ordered by the Board in a decision made after a hearing in the manner provided by the rules adopted by the Board. One (1) year from the date of the revocation of a license, an application may be made to the Board for reinstatement. The Board shall have the discretion to accept or reject an application for reinstatement and may, but shall not be required to, hold a hearing to consider such reinstatement. (Apr. 6, 1978, D.C. Law 2-67, § 13, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.12. Renewal of license.

(a) Licenses issued under this subchapter shall be subject to annual renewal, upon the payment of a renewal fee, and shall expire unless renewed in the manner prescribed by the rules of the Board. The Board may establish additional requirements for license renewal which provide evidence of continued competency. The Board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no such late renewal of a license may be granted more than five (5) years after its expiration.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, whose license remains suspended until reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable. (Apr. 6, 1978, D.C. Law 2-67, § 14, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.13. Renewal of license: Non-practicing therapists.

(a) Every registered occupational therapist who is engaged in or who proposes to engage in the practice of occupational therapy in the District of Columbia is hereby required to register with the Board annually. Any registrant who allows his registration to lapse by failing to renew the registration annually may be reinstated by the Board by showing cause satisfactory to the Board for such failure and upon payment of all required fees. The Mayor is authorized to change from time to time the period for which registration or renewal thereof may be issued.

(b) Any person registered under the provisions of this subchapter, but not practicing in the District of Columbia, shall give written notice of such fact to the Board. Upon receipt of such notice, the Board shall place the name of such person upon the non-practicing list. While remaining on such list, such person shall not be subject to the payment of any renewal fee and shall not hold himself out as a registered occupational therapist nor practice as such in the District of Columbia. Application for renewal or registration and payment of a renewal fee for the current year shall be made to the Board by any such person desiring to resume practice as a registered occupational therapist. (Apr. 6, 1978, D.C. Law 2-67, § 15, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.14. Fees.

The Board shall make public, in the manner established by its rules, fees in amounts determined by the Mayor, for the following purposes:

- (a) application for examination;
- (b) initial license fee;
- (c) renewal of license fee;
- (d) late renewal fee; and
- (e) endorsement fee.

(Apr. 6, 1978, D.C. Law 2-67, § 16, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

Section referred to in section. 2-499.7.

§ 2-499.15. False representation of registration prohibited.

(a) It is unlawful for any person who is not registered under this subchapter as an occupational therapist or as an occupational therapy assistant, whose registration has been suspended or revoked, to use, in connection with his name or place of business, the words, “occupational therapist”, “licensed occupational therapist”, “occupational therapist registered”, “occupational therapy assistant”, “certified occupational therapy assistant”, or “licensed occupational therapy assistant”, or the letters “O.T.”, “L.O.T.”, “O.T.R.”, “O.T.A.”, “C.O.T.A.”, or “L.O.T.A.”, or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant in any way, orally, in writing, in print or by sign, directly or by implication, or representing himself as an occupational therapist or an occupational therapy assistant.

(b) No firm, partnership, association, or corporation shall advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current and valid license or permit under this subchapter is or will, at the appropriate time, be rendering the occupational therapy services to which reference is made. (Apr. 6, 1978, D.C. Law 2-67, § 17, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.16. Enforcement: Penalties.

Any person who shall violate the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500), or by imprisonment for not more than one (1) year, or both. (Apr. 6, 1978, D.C. Law 2-67, § 18, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

§ 2-499.17. Severability.

If a part of this subchapter is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect. If a part of this subchapter is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications. (Apr. 6, 1978, D.C. Law 2-67, § 20, 24 DCR 6815.)

Legislative History of Law 2-67. See note to § 2-499.

CHAPTER 6.—PHARMACY

| Sec. | Sec. |
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| 2-601. Pharmacy regulations — Sale of drugs restricted — Licensed pharmacists in drug stores — Physicians, dentists, and veterinarians exempt — Sale of poisons — Permits to sell — Sales by minors — Sale of household drugs — Patent medicine. | Revocation of license — Review in District of Columbia Court of Appeals — Public display of license. |
| 2-606. Renewal of licenses or permits to sell poisons — Renewal obtained by fraud — Failure of board to renew — Hearings — Attendance of witnesses — Report of findings — | 2-608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art — Accounting — Records — Reports. |
| | 2-609. Fees — Expenses — Compensation of Board. |

§ 2-601. Pharmacy regulations — Sale of drugs restricted — Licensed pharmacists in drug stores — Physicians, dentists, and veterinarians exempt — Sale of poisons — Permits to sell — Sales by minors — Sale of household drugs — Patent medicine.

It shall be unlawful for any person not licensed as a pharmacist within the meaning of this chapter to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poisons, or for the compounding of physicians' prescriptions, or to keep exposed for sale, at retail, any drugs, chemicals, or poisons, except as hereinafter provided; or, except as hereinafter provided, for any person not licensed as a pharmacist within the meaning of this chapter to compound, dispense, or sell, at retail, any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or to compound physicians' prescriptions, except as an aid to and under the proper supervision of a pharmacist licensed under this chapter. And it shall be unlawful for any owner or manager of a pharmacy, drug store, or other place of business to cause or permit any person other than a licensed pharmacist to compound, dispense, or sell, at retail, any drug, medicine, or poison, except as an aid to and under the proper supervision of a licensed pharmacist: Provided, that nothing in this section shall be construed to interfere with any legally registered practitioner of medicine, dentistry, or veterinary surgery in the compounding of his own prescriptions, or to prevent him from supplying to his patients such medicines as he may deem proper; nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is so licensed, except as hereinafter provided; nor with the sale by others than pharmacists of poisonous substances sold exclusively for use in the arts, when such substances are sold in unbroken packages bearing labels having plainly printed upon them the name of the contents, the word "poison," when practicable the name of at least one suitable antidote, and the name

and address of the vendor: Provided further, that such person, firm, or corporation has obtained a permit from the Board of Pharmacy, which grants the right and privilege to make such sales, such permit to be issued for a period of three years, and that each sale of such substance be registered as required of a licensed pharmacist, and it shall be unlawful for any person under the age of eighteen years to sell such substances, and in no case shall the sale be made to a person under eighteen years of age except upon the written order of a person known or believed to be an adult: And provided further, that persons other than registered pharmacists may sell household ammonia and concentrated lye, in sealed containers plainly labeled, so as to indicate the nature of the contents with the word "poison," and with a statement of two or more antidotes to be used in case of poisoning, and may sell bicarbonate of soda, borax, cream of tartar, olive oil, sal ammoniac, and sal soda; and persons other than registered pharmacists may, furthermore sell in original sealed containers, properly labeled, such compounds as are commonly known as "patent" or "proprietary" medicines, except those the sale of which is regulated by the provisions of sections 2-610 and 2-612. (May 7, 1906, 34 Stat. 175, ch. 2084, § 1; July 22, 1976, D.C. Law 1-75, § 3(r), 23 DCR 1180; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking the phrase "or as insecticides," in the first sentence.

Legislative History of Law 2-70. Law 2-70 was introduced in Council and assigned Bill No. 2-180, which

was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on February 3, 1978, it was assigned Act No. 2-145 and transmitted to both Houses of Congress for its review.

§ 2-606. Renewal of licenses or permits to sell poisons — Renewal obtained by fraud — Failure of board to renew — Hearings — Attendance of witnesses — Report of findings — Revocation of license — Review in District of Columbia Court of Appeals — Public display of license.

In the month of November of each year every licensed pharmacist and every licensed dealer in poisons for use in the arts, whose license or permit has been issued not less than three years prior to the first day of such month, shall apply to the Board of Pharmacy for the renewal of such license or permit. And said Board is hereby authorized, upon the payment of such fees as are hereinafter provided, to renew such license or permit in the month of November for a period of three years from the 31st day of October immediately preceding the date thereof. And every license or permit not renewed within the month of November as aforesaid shall be void and of no effect unless and until renewed. Any license, permit, or renewal obtained through fraud or by any false or fraudulent representation shall be void and of no effect. No person shall make any false or fraudulent representation for the purpose of procuring a license, permit, or renewal thereof either for himself or for another.

In the event the board shall fail or refuse to renew any license or permit within the month of November, for which application has been made, it shall make written record of the reasons for such nonrenewal. Upon request of the person seeking renewal of his license or permit, the Board shall grant a hearing, and the applicant shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the Board is hereby empowered to administer oaths.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

The Board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioner of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted.

Every license to practice pharmacy and every permit to sell poisons for use in the arts and every current renewal of such permit shall be conspicuously displayed by the person to whom the same has been issued in the pharmacy, drug store, or place of business, if any, of which the said person is the owner or manager. (May 7, 1906, 34 Stat. 177, ch. 2084, § 7; Mar. 4, 1927, 44 Stat. 1414, ch. 497, § 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88-241, § 4; July 29, 1970, Pub. L. 91-358, title I, §§ 155 (c) (6), 164 (k), 85 Stat. 570, 586; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase "or as insecticides" at each place it occurred.

Legislative History of Law 2-70. See note to § 2-601.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art — Accounting — Records — Reports.

Said Board of Pharmacy shall have all such rights, powers, and duties with respect to the examination of applicants for license as pharmacists and with reference to the issue of licenses to practice pharmacy and of permits to sell poisons for use in the arts as the said board (Commission on Licensure to Practice the Healing Art in the District of Columbia) has with reference to the examination of applicants for license to practice medicine, surgery, and midwifery, and with reference to the issue of licenses to such persons, except in so far as may be inconsistent with the provisions of this chapter. The treasurer of said Board shall render to the Commissioner of the District of Columbia accounts of his receipts and disbursements from time to time as said Commissioner shall direct. Said Board shall keep records of its proceedings, and such records shall be prima facie evidence of all matters contained therein in all courts in the District of Columbia. Said Board shall in the month of July of each year, make to the Commissioner of the District of Columbia a written report of its proceedings, of its receipts and disbursements, and of all licenses and permits issued. (May 7, 1906, 34 Stat. 178, ch. 2084, § 9; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase "or as insecticides" in the first sentence.

Legislative History of Law 2-70. See note to § 2-601.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-609. Fees — Expenses — Compensation of Board.

Applicants for license to practice pharmacy and for permits to sell poisons for use in the arts shall pay the following fee: For examination for license as pharmacist, \$15, and for each renewal thereof \$3; for a permit for the sale of poisons for use in the arts, \$1, and for each renewal thereof, 50 cents.

All fees for licenses to practice pharmacy and all fees aforesaid shall be paid to the treasurer of the Board of Pharmacy of the District of Columbia before any applicant may be admitted to

examination and before any license or permit, or any renewal thereof; may be issued by the said Board. And all expenses of said Board incident to the execution of the provisions of this chapter shall be paid from the fees collected by the Board of Pharmacy aforesaid. If any balance remains on hand on the 30th day of June of any year the members of said Board appointed as such shall be paid therefrom such reasonable amounts as the Commissioner of the District of Columbia may determine. (May 7, 1906, 34 Stat. 179, ch. 2084, § 10; Feb. 27, 1907, 34 Stat. 1005, ch. 2085, § 1; Mar. 4, 1927, 44 Stat. 1415, ch. 497, § 4; Apr. 18, 1978, D.C. Law 2-70, § 21, 24 DCR 6867.)

Effect of Amendment.
1978 — Act April 18, 1978, D.C. Law 2-70, amended section by striking out the phrase “or as insecticides” at each place it occurred.
Legislative History of Law 2-70. See note to § 2-601.
Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-610. Sale of cocaine, morphine, opium, chloral hydrate, or compounds thereof, restricted — Prescription — Filling and refilling prescription — Exceptions — Wholesale trade.

Section referred to in section. 2-601.

§ 2-612. Restrictions on sale or delivery of poisonous compounds — Records of sales — Use of “poison labels” — “Poison bottles” — Exceptions.

Section referred to in section. 2-601.

CHAPTER 7.—PODIATRY

§ 2-711. “Practice of podiatry” defined.

NOTES TO DECISIONS

Cited in Government of Republic of China v. Compass Communications Corp. (1979, 473 F. Supp. 1306).

CHAPTER 9.—ACCOUNTANTS

- Sec.
- 2-911 to 2-931. [Repealed.]
 - 2-941. Purpose.
 - 2-942. Definitions.
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- Sec.
- 2-953. Offices — Registration thereof.
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 - 2-963. Construction.
 - 2-964. Effect of repeal of prior act.
 - 2-965. Effective date.

§§ 2-911 to 2-931. Repealed. Mar. 16, 1978, D.C. Law 2-59, § 25, 24 DCR 5975.

Legislative History of Law 2-59. See note to § 2-941.

Sections referred to in section. 2-964.

Cross reference. For provisions enumerating effect of repeal of §§ 2-911 to 2-931 on prior actions and continuation of the Board of Accountancy, see § 2-964.

§ 2-941. Purpose.

It is the policy of the District of Columbia and the purpose of this chapter to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires that persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so; that a public authority competent to prescribe and assess the qualifications of public accountants be established; and that the attestation of financial information by persons professing expertise in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession. (Mar. 16, 1978, D.C. Law 2-59, § 2, 24 DCR 5975.)

Legislative History of Law 2-59. Law 2-59 was introduced in Council and assigned Bill No. 2-69, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first, amended first, and second readings on July 26, 1977, October 25, 1977 and November 8, 1977, respectively. Signed by the Mayor on January 9, 1978, it was assigned Act No. 2-130

and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 16, 1978, D.C. Law 2-59, 24 DCR 5975, provided: "That this act may be cited as the 'District of Columbia Public Accountancy Act of 1977.'"

Section referred to in section. 2-943.

§ 2-942. Definitions.

As used in this chapter:

(a) The term "Board" means the District of Columbia Board of Accountancy established under section 2-943.

(b) The term "Council" means the Council of the District of Columbia as established under section 1-141 (a).

(c) The term "District" means the District of Columbia.

(d) The term "Mayor" means the Mayor of the District of Columbia, as established under section 1-161 (a).

(e) The term "state" includes any state, territory or insular possession of the United States and the District of Columbia.

(f) The term "valid permit" means an unexpired permit which has not been suspended or revoked.

(Mar. 16, 1978, D.C. Law 2-59, § 3, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-943. Board of Accountancy.

(a) There is hereby established a board of accountancy in and for the District to be known as the District of Columbia Board of Accountancy and to consist of five (5) members appointed by the Mayor.

(b) The Board shall be appointed as follows:

(1) One (1) member of the Board shall be appointed from among those persons registered as public accountants under section 2-949, and one (1) member of the Board shall be appointed from among persons who are not accountants and who represent the consumer in accountancy.

(2) Three (3) members of the Board shall each hold a certificate as a certified public accountant issued under section 2-947, hold a valid permit to practice issued under section 2-954 and, at the time of the member's appointment, have been engaged in the practice of public accountancy as a certified public accountant in the District for a period of not less than five (5) years.

(c) The members of the Board first appointed under this chapter shall be appointed for terms of office as follows: one (1) member for a term of one (1) year, two (2) members for a term of two (2) years each; and two (2) members for a term of three (3) years each. Their successors shall be appointed for a term of three (3) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of a member's term of office, that member shall continue to serve until his or her successor has been appointed. No person who has served two (2) successive full terms shall be eligible for reappointment until after the lapse of one (1) year. An appointment to fill an unexpired term shall not be considered a full term.

(d) The Mayor may remove any member of the Board appointed under subsection (b) (2) of this section whose permit to practice has become void or has been revoked or suspended. The Mayor may, after a hearing, remove any member of the Board for neglect of duty or other just cause.

(e) The Board shall promulgate regulations for the orderly conduct of its affairs and for the administration of this chapter.

(f) A majority of the Board shall constitute a quorum for the transaction of business.

(g) The Board is authorized to adopt a seal.

(h) The Board shall meet at least once a year.

(i) The Board is authorized to prescribe such rules and regulations not inconsistent with the provisions of this chapter as it deems consistent with or required by the public welfare and policy set forth in section 2-941. Such rules and regulations shall include but are not limited to the following:

(1) rules of procedure;

(2) rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy;

(3) regulations governing educational requirements for the issuance of the certificate of certified public accountant and requirements of continuing education to be met from time to time by the holders of such certificates and permits as a condition of their continuing in the practice of public accountancy; and

(4) regulations governing corporations practicing public accounting including but not limited to:

(A) rules concerning their style, name, title and affiliation with any other organization;

(B) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(C) prescribing joint and several liability for torts relating to professional services for the shareholders of any corporation practicing public accounting and failing to comply with the standards issued under this paragraph (4).

(Mar. 16, 1978, D.C. Law 2-59, § 4, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in section. 2-942.

§ 2-944. Fees.

The Mayor is authorized to set fees, including such fees as may be necessary to cover the costs of administering this chapter, and the dates of issuance and expiration of certificates and permits to practice under this chapter. (Mar. 16, 1978, D.C. Law 2-59, § 5, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-945. Acts declared unlawful.

(a) Except as permitted by the Board pursuant to section 2-946, no person shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a certified public accountant, unless the person has received a certificate as a certified public accountant under section 2-947, holds a valid permit issued under section 2-954 and all of the person’s offices in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(b) No partnership or corporation shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the partnership or corporation is composed of certified public accountants unless the partnership or corporation is registered as a partnership or corporation of certified public accountants under section 2-951, holds a valid permit issued under section 2-954 and all offices of such partnership or corporation in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(c) No person shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a public accountant unless that person is:

(1) registered as a public accountant under section 2-949, holds a valid permit issued under section 2-954 and all of such person’s offices in the District for the practice of public accounting are maintained and registered as required under section 2-953; or

(2) a certified public accountant under section 2-947.

(d) No partnership or corporation shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the partnership or corporation is composed of public accountants unless it is a partnership or corporation of public accountants as described in section 2-952 or a partnership or corporation of certified public accountants under section 2-951, holds a valid permit issued under section 2-954 and all offices of the partnership or corporation in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(e) No person, partnership or corporation shall assume or use the title or designation “certified accountant,” “chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered accountant,” “accredited accountant” or any other title or designation likely to be confused with “certified public accountant” or “public accountant”, or any of the abbreviations “CA”, “PA”, “RA”, “LA”, or “AA”, or similar abbreviations likely to be confused with “CPA”: Provided, however, that anyone who holds a valid permit issued under section 2-954 and all of whose offices in the District for the practice of public accounting are maintained and registered as required under section 2-953 may hold himself out to the public as an “accountant” or “auditor”.

(f) No person shall sign or affix his or her name or any trade or assumed name used by the person in his or her profession or business to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts concerning compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, together with any wording accompanying or contained in the opinion or certificate which indicates that the person is either an accountant or an auditor or has expert knowledge in accounting or auditing, unless the person holds a valid permit issued under section 2-954 and all of the person’s offices in the District for the practice of public accounting are maintained and registered under section 2-953: Provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner or principal of any organization from affixing his or her signature to any statement or report in reference to the affairs of the organization with any wording designating the position, title or office which he or she holds in the organization nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his or her official duties.

(g) No person shall sign or affix a partnership or corporate name to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, together with any wording accompanying or contained in the opinion or certificate which indicates that the partnership or corporation is composed of or employs accountants, auditors or other persons having expert knowledge in accounting or auditing, unless the partnership or corporation holds a valid permit issued under section 2-954 and its offices in the District for the practice of public accounting are maintained and registered as required under section 2-953.

(h) No person shall assume or use the title or designation “certified public accountant” or “public accountant” in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation “and Company” or “and Co.” or a similar designation if there is in fact no bona fide partnership or corporation registered under sections 2-951 or 2-952: Provided, that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this chapter may continue to do so. (Mar. 16, 1978, D.C. Law 2-59, § 6, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-946, 2-947, 2-949, 2-955, 2-959, 2-960.

§ 2-946. Exceptions.

(a) Nothing contained in this chapter shall prohibit any person not a certified public accountant or public accountant from serving as an employee of or an assistant to a certified public accountant, a public accountant, a partnership or corporation composed of certified public accountants, public accountants holding a permit to practice issued under section 2-954 or a foreign accountant registered under section 2-950: Provided, that such employee or assistant shall not issue any accounting or financial statement over his or her name.

(b) Nothing contained in this chapter shall prohibit a certified public accountant, a registered public accountant of a state or any accountant who holds a certificate, degree or license in a foreign country, constituting a recognized qualification for the practice of public accounting in that country, from temporarily or periodically performing specific accounting work in the District if he or she is conducting a regular practice in the state or foreign country: Provided, that the practice is incidental to his or her regular practice and is conducted in conformity with the regulations and rules of professional conduct promulgated by the Board.

(c) Notwithstanding the prohibitions contained in section 2-945, a foreign accountant who has registered under the provisions of section 2-950 and who holds a valid permit issued under section 2-954 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which the foreign accountant received his or her certificate, license or degree. (Mar. 16, 1978, D.C. Law 2-59, § 7, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-947. Certified public accountants.

(a) The Board is authorized to issue a certificate of “certified public accountant” to any applicant who furnishes to the Board satisfactory proof that he or she meets the following qualifications:

- (1) is at least eighteen (18) years of age;
- (2) is of good moral character;

(3) is a resident of the District or has been regularly employed in the District for the immediate six (6) months prior to the final date for accepting applications for the written examinations; or, in the case of an employee of a certified public accountant or a firm of certified

public accountants registered to practice in the District, has been a bona fide resident of a foreign country for a period of not less than the eighteen (18) months preceding the date of filing an application and is not qualified to be examined and to receive a certificate of certified public accountant in the state of last residence solely because of the aforesaid residence abroad;

(4) has passed a written examination in accounting and auditing and such related subjects as the Board shall determine to be appropriate; and

(5) (A) holds a baccalaureate degree with a concentration in accounting conferred by a college or university recognized by the Board or holds that which the Board determines to be substantially the equivalent thereof; or

(B) holds a baccalaureate degree acceptable to the Board supplemented with the equivalent of an accounting concentration including related courses in other areas of business administration; and

(6) has paid all required fees.

(b) Waiver of the educational requirements specified in subsection (a) (5) of this section shall be permitted only under the following circumstances:

(1) The Board shall waive all educational requirements specified in subsection (a) (5) of this section for an applicant who is registered as a public accountant under section 2-949;

(2) The Board may waive the educational requirements specified in subsection (a) (5) of this section for an applicant who, on the effective date of this chapter, was employed as a staff accountant in the District by anyone practicing public accounting: Provided, that the applicant can provide proof satisfactory to the Board of four (4) years of experience acceptable to the Board in the practice of public accounting or equivalent work experience; or

(3) The Board may waive the educational requirements in subsection (a) (5) for an applicant who, as a result of a written examination given or authorized by the Board to test the applicant's educational qualifications demonstrates to the Board's satisfaction that he or she is as well equipped educationally as if he or she met the applicable educational requirements specified above.

(c) The examination described in subsection (a) (4) of this section shall be held at least once a year and at such other times as the Board may prescribe. The Board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service which the Board deems appropriate.

(d) An applicant who provides proof satisfactory to the Board that he or she has a reasonable expectation of meeting the educational requirements within ninety (90) days following the examination prescribed in subsection (a) (4) of this section shall be eligible to take said examination: Provided, that the applicant has met all the other requirements of subsection (a) of this section and: Provided, further, that no certificate shall be issued nor shall credit for the examination or any part of it be given, unless the requirement is in fact completed within the ninety (90) days or within such time as the Board in its discretion may allow upon application.

(e) The Board may, by regulation, provide for granting credit to an applicant for the satisfactory completion of a written examination given by the licensing authority of any state in any one or more of the subjects included in the examination required pursuant to subsection (a) (4) of this section: Provided, that any examination approved as a basis for any credit shall, in the judgment of the Board, be at least as thorough as the most recent examination given by the Board at the time of the granting of the credit.

(f) The Board may prescribe by regulation the terms and conditions under which an applicant who passes the examination in one (1) or more of the subjects indicated in the examination prescribed under subsection (a) (4) of this section may be re-examined. It may also provide by regulation for a reasonable waiting period before the applicant's re-examination in a subject he or she has failed. Subject to the foregoing and such other regulations as the Board may adopt governing re-examinations, an applicant shall be entitled to any number of re-examinations under subsection (a) (4) of this section.

(g) In general the applicable educational requirements under subsection (a) (5) of this section shall be in effect on the date of the examination by which the applicant successfully completes his or her examination under subsection (a) (4) of this section. However the Board may provide by regulation for exceptions to the general rule in order to prevent what it determines to be undue hardship to applicants resulting from changes in the educational requirements in subsection (a) (5) of this section.

(h) Any person who has received from the Board a certificate as a certified public accountant and who holds a permit issued under section 2-954 which is in full force and effect shall be styled and known as a “certified public accountant” and may also use the abbreviation “CPA”.

(i) Nothing in this chapter shall be construed to prohibit any person holding a certificate issued pursuant to this section, but not holding a valid permit issued under section 2-954, from assuming or using the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant: Provided, that:

(1) the Board has not revoked, suspended or refused to renew a permit previously issued to the person for any cause specified in section 2-955;

(2) such assumption or use is not incident to the practice of public accountancy; and

(3) such assumption or use is not in conjunction with or incident to any opinion or certificate within the purview of sections 2-945 (f) and 2-945 (g).

(j) Persons who, on the effective date of this chapter, hold a certified public accountant certificate or an endorsement of a certificate theretofore issued under the laws of the District shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to the provisions of this chapter and such certificate theretofore issued shall, for all purposes, be considered a certificate issued under and subject to the provisions of this chapter.

(k) The Board may, in its discretion, waive the examination under subsection (a) (4) of this section and may issue an endorsement of a certificate as a “certified public accountant” to an applicant who:

(1) is a certified public accountant of a state or is the holder of a certificate of certified public accountant, or the equivalent thereof, issued in any foreign country: Provided, that the requirements for such certificate are, in the opinion of the Board, equivalent to those herein required; and

(2) meets the qualifications specified in, subsections (a) (1), (a) (2), (a) (5) and (a) (6) of this section: Provided, that an applicant who is a certified public accountant in good standing of a state shall not be required to meet more extensive educational and experience qualifications than those required by the District at the time such applicant was granted his or her certificate of certified public accountant by such state; and

(3) declares his or her intention under oath for opening and maintaining or being employed in an office in the District for the purpose of engaging in the full-time public practice of his or her profession as a certified public accountant of the District.

(l) The holder of an endorsement of a certificate of certified public accountant, in full force and effect, shall have all of the privileges of the holder of a certificate of certified public accountant issued under this section and shall be subject to the provisions of this chapter.

(m) The Board shall maintain a record of certificates, endorsements and permits to practice issued under the authority of this chapter. (Mar. 16, 1978, D.C. Law 2-59, § 8, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-945, 2-948, 2-953, 2-954, 2-955.

§ 2-948. Temporary certificate and permit as a certified public accountant.

If an applicant for a certificate and permit as a certified public accountant meets all of the requirements for the certificate and permit (other than the requirement of section 2-947 (a) (3) that the applicant be a resident of the District or have a place of business therein or, if an employee, be regularly employed therein) the Board may, in its discretion, issue to the applicant a temporary certificate and permit as a certified public accountant which shall be effective only until the Board notifies the applicant that his or her application has been either approved or rejected. In no event shall such a temporary certificate or permit be in effect for more than six (6) months after the date of its issuance. (Mar. 16, 1978, D.C. Law 2-59, § 9, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-949. Public accountants — Registration thereof.

(a) Any person who (1) holds himself or herself out to the public as a public accountant and is engaged as a principal (as distinguished from an employee) within the District on the effective date of this chapter in the full-time practice of public accounting; and (2) is a resident of the District or has a place of business therein; and (3) is of good moral character may, within ninety (90) calendar days after the effective date of this chapter, register with the Board as a public accountant.

(b) The Board by regulations may provide for the registration of persons under subsection (a) of this section who, prior to the effective date of this chapter, were in practice but due to extenuating circumstances were not in practice on the effective date of this chapter.

(c) Any individual registered under subsection (b) of this section who holds a permit issued under section 2-954 shall be styled and known as a “public accountant”.

(d) Nothing in this chapter shall be construed to prohibit any person who has registered pursuant to this section, but who does not hold a valid permit issued under section 2-954, from assuming or using the title or designation “public accountant”, or the abbreviation “PA”, or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a public accountant: Provided, that:

(1) the Board has not revoked, suspended or refused to renew a permit previously issued to the person for any cause specified in section 2-955;

(2) the assumption or use of the title or designation is not incident to the practice of public accountancy; and

(3) such assumption or use is not in conjunction with or incident to any opinion or certificate within the purview of sections 2-945 (f) or 2-945 (g).

(Mar. 16, 1978, D.C. Law 2-59, § 10, 24 DCR 5975.)

Emergency Act Amendment.

1978 — For temporary amendment of subsection (a), see sec. 2 of the Public Accountancy Emergency Act of 1978 (D.C. Act 2-219, July 5, 1978, 25 DCR 1385).

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-947, 2-954, 2-955.

§ 2-950. Foreign accountants — Registration thereof.

The Board may, in its discretion, permit the registration of any person of good moral character who is the holder in good standing of a certificate, license or degree in a foreign country which constitutes a recognized qualification for the practice of public accounting in that country. A person so registered shall use only the title under which he or she is generally known in his or her own country, followed by the name of the country from which the certificate, license or degree was received. (Mar. 16, 1978, D.C. Law 2-59, § 11, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-946, 2-953, 2-954.

§ 2-951. Partnerships and corporations composed of certified public accountants — Registration thereof.

(a) A partnership engaged in the District in the practice of public accounting may register with the Board as a partnership of certified public accountants if it meets the following requirements:

(1) at least one (1) general partner thereof must be a certified public accountant of the District in good standing;

(2) each partner hereof must be a certified public accountant of a state in good standing; and

(3) at least one (1) partner or the resident manager in charge of an office of the partnership in the District and each partner thereof personally engaged within the District in the practice of public accounting as a member thereof must be a certified public accountant of the District in good standing.

(b) A corporation organized for the practice of public accounting may register with the Board as a corporation of certified public accountants if it is duly registered under the District of Columbia Professional Corporation Act (D.C. Code, sec. 29-1101 et seq.) and is in compliance with such regulations as may be prescribed for such corporations.

(c) A partnership or corporation which is registered pursuant to this section and which holds a permit issued under section 2-954 may use the words “certified public accountants” or the abbreviation “CPA” in connection with its partnership or corporate name. Notification shall be given the Board within one (1) month after the admission or withdrawal of a partner or shareholder in practice in the District from any partnership or corporation so registered. (Mar. 16, 1978, D.C. Law 2-59, § 12, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-945, 2-954.

§ 2-952. Partnerships and corporations composed of public accountants — Registration thereof.

(a) A partnership engaged in the District in the practice of public accounting may register with the Board as a partnership of public accountants if it meets the following requirements:

(1) at least one (1) general partner thereof is a certified public accountant or a public accountant of the District in good standing;

(2) each partner thereof personally engaged within the District in the practice of public accounting as a member of the partnership must be a certified public accountant or a public accountant of the District in good standing; and

(3) at least one (1) partner or the resident manager in charge of an office of a firm in the District must be a certified public accountant or a public accountant of the District in good standing.

(b) A corporation organized for the practice of public accounting may be formed under the District of Columbia Professional Corporation Act (D.C. Code, sec. 29-1101 et seq.) and may register with the Board as a corporation of public accountants. The corporation must be in compliance with such other regulations pertaining to corporations practicing public accounting in the District as the Board may prescribe.

(c) The application for registration must be made upon the affidavit of a general partner or shareholder who holds a permit to practice in the District as a certified public accountant or as a public accountant. The Board shall in each case determine whether the applicant is eligible for registration. A partnership or corporation which is so registered and which holds a permit issued under section 2-954 may use the words “public accountants” in connection with its partnership or corporate name. Notification shall be given the Board within one (1) month after the admission to or withdrawal of a partner or shareholder from any partnership or corporation so registered. (Mar. 16, 1978, D.C. Law 2-59, § 13, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-945, 2-954.

§ 2-953. Offices — Registration thereof.

(a) Each office established or maintained in the District for the practice of public accounting by a certified public accountant, or partnership or corporation of certified public accountants; or by a public accountant or a partnership or corporation of public accountants; or by one registered under section 2-950 shall be registered annually with the Board. Each such office shall be under the direct supervision of at least one (1) partner or the resident manager who may be either a principal, a shareholder or a staff employee holding a valid permit under section 2-954: Provided, that the title or designation “certified public accountant” or the abbreviation “CPA” shall not be used in connection with such office unless the partner or resident manager is the holder of a certificate as a certified public accountant issued under section 2-947 and a permit issued under section 2-954, both of which are in full force and effect. Such partner or resident manager may serve in such capacity at one (1) office only.

(b) The Board shall by regulation prescribe the procedure to be followed in effecting such registrations. (Mar. 16, 1978, D.C. Law 2-59, § 14, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-945, 2-954.

§ 2-954. Annual permits to practice.

(a) Permits to engage in the practice of public accounting in the District shall be issued by the Board to holders of the certificates of certified public accountant issued under section 2-947 who have furnished evidence satisfactory to the Board of compliance with the requirements of subsection (b) of this section and to persons, partnerships and corporations registered under sections 2-949, 2-950, 2-951 and 2-952: Provided, that all offices in the District of the certificate holder or registrant are maintained and registered as required under section 2-953 and: Provided, further, that holders of certificates issued pursuant to section 2-947 may be required as a condition of the issuance of a permit pursuant to this section to demonstrate, in accordance with the regulations issued by the Board, experience of not fewer than two (2) years in either:

(1) auditing books and accounts of other persons in accordance with generally accepted auditing standards;

(2) reviewing financial statements and supporting material covering the financial conditions and operations of private business entities to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles;

(3) such other experience including auditing and accounting experience in a governmental agency as the Board in its discretion regards as qualifying experience under the facts and circumstances of individual cases; or

(4) any combination of the foregoing.

(b) All permits to practice shall expire on the day of the year set by the Mayor and may be renewed annually for a period of one (1) year by certificate holders and registrants in good standing. The failure of a certificate holder or registrant to apply for an annual permit to practice within three (3) years from either the expiration date of the permit to practice last obtained or renewed or the date upon which the certificate holder or registrant was granted his or her certificate or registration (if no permit was ever issued to him or her) shall deprive the person of the right to renew or have issued such permit, unless the Board in its discretion determines the failure to have been due to reasonable cause or excusable neglect. A permit to practice shall be issued, however, if the applicant satisfied the requirements for the initial issuance of the permit.

(c) After the Board promulgates regulations establishing continuing education requirements, as authorized pursuant to section 2-943 (i) (3), applications for renewal shall be accompanied by

such evidence of compliance therewith as the Board shall prescribe. The failure of an applicant for the renewal of an annual permit to furnish such evidence shall constitute cause under section 2-955 for the revocation, suspension or refusal to renew the permit in a proceeding under section 2-957, unless the Board in its discretion determines that the failure was a result of a reasonable cause or an excusable neglect. The Board in its discretion may renew an annual permit to practice, despite the failure to furnish evidence of the satisfaction of the requirements of continuing education, upon the condition that the applicant will follow a satisfactory program or schedule of continuing education. In issuing rules, regulations, and individual orders with respect to the requirements of continuing education, the Board in its discretion may, among other things, use and rely upon guidelines and pronouncements of recognized educational and professional associations; prescribe for content, duration, and organization of courses; take into account the accessibility to applicants of such continuing education as the Board may require and any impediments to the interstate practice of public accountancy which may result from differences in such requirements in the states; and provide for the relaxation or suspension of such requirements in instances of individual hardship. (Mar. 16, 1978, D.C. Law 2-59, § 15, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Section referred to in sections. 2-943, 2-945, 2-946, 2-947, 2-949, 2-951, 2-952, 2-953, 2-955, 2-956.

§ 2-955. Revocation or suspension of certificate or registration or permit.

After a notice and hearing as provided for in section 2-957, the Board may:

(1) revoke or suspend, for a period not to exceed three (3) years, any certificate issued under section 2-947 or any registration granted under section 2-949;

(2) revoke, suspend or refuse to renew any permit issued under section 2-954; or

(3) censure the holder of any such permit for any one (1) or any combination of the following causes:

(A) fraud or deceit in obtaining a certificate, registration permit or other benefit under this chapter;

(B) dishonesty, fraud or gross negligence in the practice of public accounting;

(C) the violation of any of the provisions of section 2-945;

(D) the violation of a rule of professional conduct promulgated by the Board under the authority granted by this chapter;

(E) the conviction of a felony under the laws of any state or of the United States;

(F) the conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(G) the cancellation, revocation, suspension or refusal to renew the holder's authority to practice as a certified public accountant or a public accountant by any state for any cause other than the failure to pay an annual registration fee in such state;

(H) the suspension or revocation of the holder's right to practice before any state or federal agency;

(I) with regard to the annual permit to practice, the failure of:

(i) a certificate holder or registrant to obtain an annual permit under section 2-954 within the time specified in section 2-954 (b); or

(ii) a holder of a valid permit to furnish evidence of satisfaction of the requirements of continuing education as required by the Board under section 2-954 or to meet any conditions with respect to continuing education which the Board may have ordered concerning the certificate holder under that section; or

(J) conduct discreditable to the public accounting profession.

(Mar. 16, 1978, D.C. Law 2-59, § 16, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-947, 2-949, 2-954, 2-956.

§ 2-956. Revocation or suspension of partnership's or corporation's registration or permit.

(a) After a notice and hearing as provided in section 2-957, the Board shall revoke the registration and permit to practice of a partnership or corporation if at any time it does not meet all the qualifications prescribed by the section of this chapter under which it qualified for registration.

(b) After a notice and hearing as provided in section 2-957, the Board may:

- (1) revoke or suspend the registration of a partnership or corporation;
- (2) revoke, suspend or refuse to renew the permit of a partnership or corporation to practice under section 2-954; or
- (3) censure the holder of any such permit for any of the causes enumerated in section 2-955 or for any of the following additional causes:

(A) the revocation or suspension of the certificate of registration or the revocation or suspension or refusal to renew the permit to practice of any partner or shareholder; or

(B) the cancellation, revocation, suspension or refusal to renew the authority of the partnership or corporation, or any partner or shareholder thereof, to practice public accounting in any state for any cause other than the failure to pay an annual registration fee in such state.

(Mar. 16, 1978, D.C. Law 2-59, § 17, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-957. Hearings before the board — Periodic review.

(a) The Board shall adopt and prescribe administrative procedures governing the denial, suspension or revocation of any certificate, permit, endorsement or registration. Such procedures shall be consistent with the contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509), including reasonable notice and an opportunity for a hearing.

(b) The Board is authorized and empowered in connection with any hearing pursuant to its authority under this section to administer oaths and to subpoena any necessary witnesses, books, papers, records and documents. (Mar. 16, 1978, D.C. Law 2-59, § 18, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.
Section referred to in sections. 2-954, 2-955, 2-956.

§ 2-958. Reinstatement.

(a) Upon an application in writing and after a hearing pursuant to a notice, the Board may:

- (1) issue a new certificate to a certified public accountant whose certificate has been revoked; or
- (2) permit the re-registration of anyone whose registration has been revoked; or
- (3) reissue or modify the suspension of any permit to practice public accounting which has been revoked or suspended.

(b) The burden shall be upon the applicant to show that he or she qualifies for reinstatement. (Mar. 16, 1978, D.C. Law 2-59, § 19, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-959. Injunction against unlawful acts.

Whenever, in the judgment of the Board, any person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of section 2-945, the Board may make application to the appropriate court for an order enjoining such acts or practices and upon a showing by the Board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court. (Mar. 16, 1978, D.C. Law 2-59, § 20, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-960. Penalty.

Any person who violates any provision of section 2-945 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than one (1) year, or to both such fine and imprisonment. Whenever the Board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the Corporation Counsel of the District of Columbia who may, in his or her discretion, cause appropriate proceedings to be brought. (Mar. 16, 1978, D.C. Law 2-59, § 21, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-961. Single act evidence of practice.

The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof shall be prima facie evidence in any action brought under this chapter that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device and that such person is holding himself or herself out to be a certified public accountant or a public accountant. In any such case, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (Mar. 16, 1978, D.C. Law 2-59, § 22, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-962. Ownership of an accountant's working papers.

All statements, records, schedules, working papers and memoranda made by a certified public accountant or public accountant incidental to or in the course of professional service to a client shall be and remain the property of such accountant, in the absence of an express agreement between the accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee to anyone other than one (1) or more surviving partners of the accountant or to the accountant's corporation. (Mar. 16, 1978, D.C. Law 2-59, § 23, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-963. Construction.

If any provision of this chapter or the application thereof to anyone or to any circumstances is held invalid, the remainder of the chapter and the application of the provision to others or other circumstances shall not be affected thereby. (Mar. 16, 1978, D.C. Law 2-59, § 24, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

§ 2-964. Effect of repeal of prior act.

The District of Columbia Certified Public Accountancy Act of 1966 (D.C. Code, sec. 2-911 et seq.) is hereby repealed: Provided, that nothing contained in this chapter shall invalidate or affect any action taken under any law in effect prior to the effective date of this chapter or invalidate or affect any proceeding instituted under such law before the effective date of this chapter: Provided, further, that the Board of Accountancy established pursuant to the District of Columbia Certified Public Accountancy Act of 1966 (D.C. Code, sec. 2-911 et seq.) shall continue to exercise the powers, functions and duties vested in it under such act until five (5) members of the Board are duly appointed and officially take office. (Mar. 16, 1978, D.C. Law 2-59, § 25, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Compiler's changes. This section consists of subsection (a) of section 25 of D.C. Law 2-59 only. Subsection (b) of

said law amended title 5 of DCRR and is, therefore, not set out here.

§ 2-965. Effective date.

This chapter shall apply on and after June 15, 1978. (Mar. 16, 1978, D.C. Law 2-59, § 26, 24 DCR 5975.)

Legislative History of Law 2-59. See note to § 2-941.

Compiler's changes. This section consists of subsection (a) of section 26 of D.C. Law 2-59 only. Subsection (b) of said section provided for the act taking effect pursuant to

section 1-147 (c). The actual date on which the law applied has been inserted for "the ninety-first day after its effective date."

CHAPTER 10.—ARCHITECTS

Sec.
2-1012. Compensation of members.

§ 2-1012. Compensation of members.

Each member of the said Board shall be entitled to such reasonable compensation for his services. (Dec. 13, 1924, 43 Stat. 714, ch. 9, § 12; Mar. 3, 1979, D.C. Law 2-139, § 3205(pp), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting "as may be approved by said Board" and the two provisos which followed that language at the end of the section.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 12.—BOXING AND WRESTLING COMMISSION

Subchapter III.—Boxing and Wrestling
Commission Act of 1975.

Sec.
2-1234. Establishment of Commission.

Sec.
2-1236. Powers.

Subchapter III.—Boxing and Wrestling Commission Act of 1975

§ 2-1234. Establishment of Commission.

* * * * *

(f) The members of the Commission shall receive compensation pursuant to the provisions of section 1-341.8.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(mm), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “compensation pursuant to the provisions of section 1-341.8” for “remuneration for their services in an amount to be determined by the Mayor at such time as the Commission is deemed established in accordance with subsection (g) of this section, provided that no such member shall receive remuneration in excess of \$75 per diem” in subsection (f).
Emergency Act Amendment.
1979 — For temporary deletion of the amendment made

by D.C. Law 2-139, see sec. 2(l) of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 2-1236. Powers.

* * * * *

(g) The Commission shall have the power to employ such personnel as is necessary to carry out this subchapter.
(h) Each member of the Commission shall have the power to administer oaths and affirmations and examine witnesses concerning any matters within the jurisdiction of the Commission. The Commission shall be vested with power to issue subpoenas as to matters within its jurisdiction and enforce the same in the Superior Court of the District of Columbia.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(ll), (mm), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “such personnel as is necessary to carry out this subchapter” for “clerical and administrative personnel as it deems necessary and at rates of compensation that this Commission shall fix provided that such rate shall not exceed \$20,000 per person per annum” and deleting the former second sentence in subsection (g),

and by substituting the present second sentence for the former second and third sentences in subsection (h).
Legislative History of Law 2-139. See note to § 1331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 17.—ARMORY BOARD

Subchapter II.—District of Columbia
Stadium

Sec.
2-1726. Employment of personnel and fixing of compensation — Delegation of authority.

Subchapter I.—General Provisions

§ 2-1702. Membership of board — Term — Appointment of alternates — Delegation of authority — Compensation — Election of chairman.

Section referred to in section. 1-334.6.

Subchapter II.—District of Columbia Stadium

§ 2-1723. Authority of Board outlined.

NOTES DECISIONS

Parking lot at the Stadium is a Federal area within the meaning of 40 U.S.C. § 804, relating to the Secretary of the Interior's provision of transportation services between

federal areas. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 2-1726. Employment of personnel and fixing of compensation — Delegation of authority.

(a) The Board is authorized to employ and fix compensation of such personnel as may be necessary to carry out the purposes of this subchapter.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(bb), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “without regard to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” at the end of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 18.—PROFESSIONAL ENGINEERS

Sec.
2-1808. General powers of Board.

§ 2-1808. General powers of Board.

The Board shall have power:

* * * * *

(n) *Administrative rules and regulations; employees.* — To adopt, amend, rescind, promulgate, and enforce such administrative rules and regulations not inconsistent with this chapter, as are deemed necessary and proper by the Board to carry into effect the powers conferred by this chapter. To employ such clerical or other assistants as are necessary for the proper performance of its duties. The regular annual employees of the Board shall, for the purpose of laws relating to compensation, classification, retirement, and leave, be employees of the District of Columbia.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(e), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former last sentence in subsection (n).
Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 22.—PUBLIC DEFENDER SERVICE

Sec.
2-2223. Board of Trustees — Appointment — Members — Powers — Term of office — Vacancies — Legal Aid Society Trustees to continue in office — Trustees deemed employees of District for purpose of suit.

Sec.
2-2224. Director and Deputy Director — Duties.
2-2225. Employment of attorneys and other personnel — Compensation — Private practice by attorneys not permitted.

§ 2-2223. Board of Trustees — Appointment — Members — Powers — Term of office — Vacancies — Legal Aid Society Trustees to continue in office — Trustees deemed employees of District for purpose of suit.

(a) The powers of the Service shall be vested in a Board of Trustees composed of eleven members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b) (1) Members of the Board of Trustees shall be appointed by a panel consisting of—

(A) the chief judge of the United States Court of Appeals for the District of Columbia Circuit;

(B) the chief judge of the United States District Court for the District of Columbia;

(C) the chief judge of the District of Columbia Court of Appeals;

(D) the chief judge of the Superior Court of the District of Columbia; and

(E) the Commissioner of the District of Columbia.

The panel shall be presided over by the chief judge of the United States Court of Appeals for the District of Columbia Circuit (or in his absence, the designee of such judge). A quorum of the panel shall be four members.

(2) Four of the eleven members of the Board of Trustees shall be non-attorneys and shall be residents of the District of Columbia.

(3) Judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees.

(4) The term of office of a member of the Board of Trustees shall be three years. No person shall serve more than two consecutive terms as a member of the Board of Trustees. A vacancy in the Board of Trustees shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-155, § 2, 25 DCR 6986.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-155, amended section by substituting “eleven” for “seven” in the first sentence of subsection (a), and in subsection (b), by redesignating former paragraphs (2) and (3) as present paragraphs (3) and (4) and by inserting present paragraph (2).

was referred to the Committee on the judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 28, 1978, it was assigned Act No. 2-322 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-155. Law 2-155 was introduced in Council and assigned Bill No. 2-241, which

§ 2-2224. Director and Deputy Director — Duties.

The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. (July 29, 1970, Pub. L. 91-358, § 304, title III, 84 Stat. 656; Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former last sentence.

Legislative History of Law 2-139. See note to § 1-331.1. Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 2-2225. Employment of attorneys and other personnel — Compensation — Private practice by attorneys not permitted.

(a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective defense services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director, but shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the Office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(cc), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “without regard to chapter 51 of subchapter III of chapter 53 of title 5 of the United States Code” preceding “but” in the third sentence of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 24.—SECURITY AGENTS AND BROKERS

Sec.

2-2415. Administration of chapter.

§ 2-2413. Civil liabilities.

NOTES TO DECISIONS

Statute of limitations applicable in federal securities fraud cases. — When a private action is brought under § 10 (b) the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j (b)) and § 17 (a) of the federal Securities Act of 1933 (15 U.S.C. § 77q(a)), the two-year period of this section is the applicable statute of limitations. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Federal tolling doctrine. — Where federal securities law violations are alleged, the statute of limitations does not run until a plaintiff, in the exercise of reasonable diligence, discovered or should have discovered the fraudulent activity underlying his cause of action. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

The statutory limitations period will not await a plaintiff's leisurely discovery of the full details of the fraudulent scheme but begins to run when he possesses sufficient information which, in the exercise of due diligence, warrants further inquiry. *Wachovia Bank &*

Trust Co. v. National Student Marketing Corp. (1978, 461 F. Supp. 999).

A statute of limitations does not become operative when a plaintiff discovers all aspects of a fraudulent scheme but rather from the time when a clue to the facts, if pursued diligently, would lead to an uncovering of the general fraudulent scheme. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Class action tolling doctrine. — Filing of a class action complaint tolls the running of the statute of limitations for all purported class members who timely seek intervention after the lower court has found the asserted class too small to certify. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Class action tolling doctrine did not apply to plaintiffs who had opted out of the class action. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

§ 2-2415. Administration of chapter.

(a) This chapter shall be administered by the Public Service Commission of the District of Columbia. The Commission is hereby authorized to establish such offices and with such names or titles, and to appoint and employ such officers and employees and prescribe their duties, as may be necessary to carry out the provisions of this chapter.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205(f), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “and such positions shall be subject to chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of employees and related matters]” at the end of the second sentence of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1

CHAPTER 25.—CRIMINAL JUSTICE SUPERVISORY BOARD.

Sec.
2-2501. Definitions.
2-2502. Findings and purpose.
2-2503. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff.

Sec.
2-2504. Meetings; quorums; committees; bylaws.
2-2505. Powers and duties.
2-2506. Reports.
2-2507. Authorization of funds.

§ 2-2501. Definitions.

For the purposes of this chapter:

(a) “Board” means the Criminal Justice Supervisory Board established under section 2-2503

(b).

(b) “Crime Control Act” means the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3701).

(c) “JPC” means the Judicial Planning Committee established pursuant to section 203 (c) of the Crime Control Act of 1976 (42 U.S.C. § 3723).

(d) “Juvenile Justice Act” means the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. § 5601).

(e) “OCJPA” means the Office of Criminal Justice Plans and Analysis established pursuant to section 2-2503.

(f) “Youth” means a person who has not reached the age of twenty-one (21) years.

(g) “Senior citizen” means any person who has reached the age of sixty (60) years.

(Sept. 13, 1978, D.C. Law 2-107, § 2, 25 DCR 1391.)

Legislative History of Law 2-107. Law 2-107 was introduced in Council and assigned Bill No. 2-211, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on May 16, 1978, May 30, 1978 and June 13, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-222 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 13, 1978, D.C. Law 2-107, 25 DCR 1391, provided: “That this act may

be cited as the ‘Criminal Justice Supervisory Board Act of 1978.’ ”

Repeal of Mayor’s Orders. Section 9 of act Sept. 13, 1978, D.C. Law 2-107, 25 DCR 1391, provided for the repeal of Mayor’s Orders 77-52, effective April 1, 1977; 77-52A, effective April 19, 1977; 77-52B, effective May 17, 1977; and 78-61, effective March 23, 1978.

§ 2-2502. Findings and purpose.

The Council of the District of Columbia finds and declares that:

(a) crime and delinquency are complex social phenomena requiring the attention and efforts of the criminal justice system, local government and private citizens alike;

(b) the establishment of appropriate goals, objectives and standards for the reduction of crime and delinquency and for the administration of justice must be a priority concern;

(c) the functions of the criminal justice system must be coordinated more efficiently and effectively;

(d) the full and effective use of resources affecting local criminal justice systems requires the complete cooperation of local government agencies; and

(e) training, research, evaluation, technical assistance and public education activities must be encouraged and focused on the improvement of the criminal justice system and the generation of new methods for the prevention and reduction of crime and delinquency.
(Sept. 13, 1978, D.C. Law 2-107, § 3, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2503. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff.

(a) There is hereby established within the Executive Branch of the District of Columbia government a Criminal Justice Supervisory Board which shall serve as the law enforcement and criminal justice planning agency for the District of Columbia in accordance with the terms of the Crime Control Act. There is also hereby created an Office of Criminal Justice Plans and Analysis which shall serve as the staff of the Board.

(b) The Criminal Justice Supervisory Board shall consist of thirty-three (33) members, as follows:

- (1) the Mayor;
- (2) the Chairman of the Council of the District of Columbia;
- (3) the Chief Judge of the District of Columbia Court of Appeals;
- (4) the Chief Judge of the Superior Court of the District of Columbia;
- (5) the Corporation Counsel of the District of Columbia;
- (6) the Chairperson of the Committee on the Judiciary of the Council of the District of Columbia;
- (7) the Executive Officer of the District of Columbia Courts;
- (8) three (3) persons appointed by the Mayor from a list of no less than nine (9) nominees submitted by the Chief Judge of the District of Columbia Court of Appeals;
- (9) the United States Attorney for the District of Columbia (if he desires to serve);
- (10) the City Administrator;
- (11) a judge of the Superior Court of the District of Columbia selected by the Chief Judge of the District of Columbia Court of Appeals;
- (12) the Director of the District of Columbia Public Defender Service;
- (13) the Director of the District of Columbia Pre-Trial Services Agency;
- (14) the Chairperson of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act;
- (15) two (2) members of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act: Provided, that the two (2) members, other than the Chairperson of such state advisory group, shall not be employees of the District of Columbia government, and shall be chosen by the Mayor from among the membership of the state advisory group;
- (16) eight (8) persons appointed by the Mayor, one (1) of whom shall be a youth and two (2) of whom shall be senior citizens;
- (17) four (4) persons appointed by the Chairman of the Council of the District of Columbia with the consent of the Council: Provided, that such persons shall not be employed by the District of Columbia government, one (1) of whom shall be a youth and one (1) of whom shall be a senior citizen; and
- (18) three (3) persons appointed by the Chairperson of the Committee on the Judiciary of the Council of the District of Columbia with the consent of the Committee: Provided, that such persons shall not be employed by the District of Columbia government, one (1) of whom shall be a youth and one of whom shall be a senior citizen.

(c) An alternate of a member of the Board may be designated by each member: Provided, that such designation shall be in writing. In the event that a nongovernment member, appointed pursuant to paragraphs (15) through (18) of subsection (b) of this section, is absent from three (3) consecutive meetings of the Board or any of its committees or subcommittees, the

Chairperson of the Board shall request that the Mayor of the District of Columbia (hereinafter referred to as the “Mayor”), the Chairman of the Council, the Chairperson of the Committee on the Judiciary of the Council or the state advisory group established pursuant to section 223 of the Juvenile Justice Act, as the case may be, replace such appointed member.

(d) Members serving pursuant to paragraphs (15) through (18) of subsection (b) of this section shall serve for two (2) year terms and may be reappointed for no more than one (1) additional consecutive term. Members serving pursuant to paragraph (8) of subsection (b) of this section shall serve at the pleasure of the Chief Judge of the District of Columbia Court of Appeals. The terms of all other members shall be concurrent with their service in the office from which they derive their membership.

(e) Should any member cease to be an officer of the unit or agency of government which he is appointed to represent, his membership on the Criminal Justice Supervisory Board shall terminate immediately and a new member shall be appointed in the same manner as his predecessor to fill the unexpired term. Vacancies occurring in memberships created by paragraphs (8), (11), and (15) through (18) of subsection (b) of this section, except those by the expiration of a term, shall be filled for the balance of the unexpired term in the same manner as the original appointment within thirty (30) days of the vacancy.

(f) The Mayor shall appoint a Chairperson of the Criminal Justice Supervisory Board. A vice-chairperson shall be selected by the Board from among its members.

(g) A member of the Board is not entitled to a salary for duties performed as a member of the Board. Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official Board duties.

(h) The Mayor shall appoint an Executive Director of the Office of Criminal Justice Plans and Analysis who shall serve at the pleasure of the Mayor and who shall be paid such compensation as the Mayor may determine. The Executive Director may employ such personnel and contract for such consulting services, as may be necessary, to carry out the purposes of this chapter and for which sufficient appropriation is made. (Sept. 13, 1978, D.C. Law 2-107, § 4, 25 DCR 1391; Sept. 28, 1979, D.C. Law 3-24, §§ 2, 3, 26 DCR 405.)

Effect of Amendment.

1979 — Act Sept. 28, 1979, D.C. Law 3-24, amended section, in subsection (b), by deleting former paragraphs (12) through (14) and (17) through (19) and by redesignating former paragraphs (15), (16), (20), (21), (22), (23), and (24) as present paragraphs (12), (13), (14), (15), (16), (17), and (18). The act also, in subsection (b), substituted “thirty-three (33)” for “forty (40)” in the introductory language, substituted “three (3)” for “five (5)” and “nine (9)” for “fifteen (15)” in paragraph (8), substituted “City Administrator” for “Chief of the Metropolitan Police Department” in paragraph (10), substituted present paragraph (11) for former paragraph (11) which read “the Director of the Department of Human Resources,” substituted “Pre-Trial Services” for “Bail” in paragraph (13), substituted “two (2)” for “four (4)” and rewrote the proviso in paragraph (15), and substituted “eight (8)” for “five (5)” and deleted “Provided, that such persons shall not be employed by the District of Columbia government” following “Mayor” in paragraph (16). Finally, the act deleted “and, with respect to a member who serves on the Board by virtue of an office in the government of the District of Columbia, an alternate shall be a ranking subordinate of the member” at the end of the

first sentence of subsection (c), substituted “(15) through (18)” for “(21) through (24)” in the second sentence of subsection (c) and in the first sentence of subsection (d), and substituted “paragraphs (8), (11), and (15) through (18)” for “items (8) and (22) through (24)” in the second sentence of subsection (e).

Legislative History of Law 2-107. See note to § 2-2501.

Legislative History of Law 3-24. Law 3-24 was introduced in Council and assigned Bill No. 3-155, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-68 and transmitted to both Houses of Congress for its review.

Section referred to in section. 2-2501.

Compiler’s note. The District of Columbia Commission on the Status of Women is now the District of Columbia Commission for Women by virtue of D.C. Law 2-109 (D.C. Code, sec. 2-2601 et seq.).

Funding authorized. Section 824 of Act Dec. 27, 1979, Pub. L. 96-157, 93 Stat. 1167, authorized funding for the District’s state planning agency according to a special formula.

§ 2-2504. Meetings; quorums; committees; bylaws.

(a) The Criminal Justice Supervisory Board shall meet at least once every ninety (90) days and at such other times designated by the chairperson or a majority of the Board.

(b) A simple majority of the membership shall constitute a quorum for the Criminal Justice Supervisory Board and for its committees or subcommittees.

(c) In developing and administering an annual comprehensive criminal justice plan for the District of Columbia, the chairperson of the Board with the advice and consent of a majority of the Board shall establish committees or subcommittees comprised of members of the Board and such other persons as the chairperson of the Board deems advisable and feasible. The chairperson of the Board with the advice and consent of a majority of the Board shall also determine the chairperson for each committee. The committee structure of the Board shall include but not be limited to:

(1) a committee on the courts comprised of the JPC and designed to carry out the purposes of section 203 of the Crime Control Act;

(2) a committee on juvenile justice comprised of the state advisory group of the District of Columbia established pursuant to section 223 of the Juvenile Justice Act and designed to develop the juvenile justice component of the annual comprehensive criminal justice plan in accordance with the Juvenile Justice Act; and

(3) an appeals committee designed to consider appeals from any action of the Board denying all or part of any funds requested in any subgrant application to conduct a project for which funds are available.

(d) Except for a committee on the courts and a committee on juvenile justice, each committee of the Board shall contain: (1) at least one (1) member from or appointed by the Executive Branch of the District of Columbia government; (2) at least one (1) member from or appointed by the Council of the District of Columbia; (3) at least one (1) member from the District of Columbia courts; and (4) a sufficient number of members who are not employed by the District of Columbia government to comprise at least one-third ($\frac{1}{3}$) of the total membership of the committee or subcommittee. In the event that an executive committee is established by the Board, such executive committee shall include in its membership the same proportion of members representing the judiciary and members representing the juvenile justice advisory group as the total number of each such class of members bears to the total membership of the Board.

(e) Subject to the provisions of paragraphs (1), (2) and (3) of subsection (c) of this section, the Board shall ensure that, prior to the adoption by the Board of an annual comprehensive criminal justice plan, it shall have received and considered recommendations from at least one (1) of its committees or subcommittees with respect to what ought to be the contents of the plan concerning: (1) the administration of justice; (2) the prevention of crime; (3) detection of crime and apprehension of offenders; (4) prosecution and defense; and (5) sentencing and correctional treatment of offenders. In addition, the Board shall ensure that, prior to its making grant awards in accordance with an approved annual comprehensive criminal justice plan, the Board shall have received and considered recommendations from at least one (1) of its committees or subcommittees with respect to all potential subgrant award recipients who qualify in accordance with the Board's rules and procedures governing subgrant awards.

(f) The Board shall promulgate rules of procedure governing its operations which comply with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), and with the Advisory Neighborhood Commissions Act of 1975 (D.C. Code, sec. 1-171a et seq.). (Sept. 13, 1978, D.C. Law 2-107, § 5, 25 DCR 1391; Sept. 28, 1979, D.C. Law 3-24, § 4, 26 DCR 405.)

Effect of Amendment.

1979 — Act Sept. 28, 1979, D.C. Law 3-24, amended section, in the introductory language of subsection (c), by deleting "its" following "In" in the first sentence, and by inserting "chairperson of the Board with the advice and consent of a majority of the" in the first sentence,

"chairperson of the" in the first two sentences, and "with the advice and consent of a majority of the Board" in the second sentence.

Legislative History of Law 2-107. See note to § 2-2501.

Legislative History of Law 3-24. See note to § 2-2503.

§ 2-2505. Powers and duties.

The Board shall:

(a) advise and assist the Mayor, the District of Columbia Courts and the Council of the District of Columbia in developing policies, plans, programs and budgets for improving the coordination, administration and effectiveness of the criminal justice system in the District of Columbia;

(b) approve all components of the annual comprehensive criminal justice plan prepared pursuant to the Crime Control Act and submit such plan to the Council of the District of Columbia for its advisory review of the goals, priorities and policies contained therein prior to the ultimate submission of such plan to the Law Enforcement Assistance Administration, United States Department of Justice;

(c) include in each annual comprehensive criminal justice plan a statement of the fiscal impact each component of such plan would likely have, if any, on the fiscal budget of the District of Columbia for the next five (5) years;

(d) assure the participation of citizens, community organizations and juvenile justice advocates at all levels of the planning process;

(e) recommend goals, priorities and standards for the reduction of crime and the improvement of the administration of justice in the District of Columbia;

(f) recommend criminal justice legislation to the Mayor, the Council of the District of Columbia and the Congress, where appropriate;

(g) ensure that the annual judicial plan developed by the JPC is implemented to the extent that it is in conformity with the comprehensive plan for the improvement of law enforcement and criminal justice in accordance with section 304 (b) of the Crime Control Act;

(h) encourage local and regional comprehensive criminal justice planning efforts;

(i) monitor and evaluate programs and projects, funded in whole or in part by the District of Columbia government, aimed at reducing crime and delinquency and improving the administration of justice;

(j) cooperate with and render technical assistance to agencies and units of the District of Columbia government, and public or private agencies relating to the criminal justice system;

(k) have the authority to collect from any District of Columbia governmental entity information, data, reports, statistics or such other material which is necessary to carry out the functions of the Office of Criminal Justice Plans and Analysis consistent with the District of Columbia Self-Government and Governmental Reorganization Act; and

(l) perform such other duties as may be necessary to carry out the purposes of this chapter. (Sept. 13, 1978, D.C. Law 2-107, § 6, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2506. Reports.

(a) Within ninety (90) days of the close of each fiscal year, the Criminal Justice Supervisory Board shall submit an annual report to the Mayor and to the Council of the District of Columbia concerning its work during the preceding fiscal year.

(b) The OCJPA through the Board may submit other studies, evaluations, crime data analyses and reports to the Mayor or the Council of the District of Columbia as deemed appropriate or as requested by the Mayor or the Council. (Sept. 13, 1978, D.C. Law 2-107, § 7, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

§ 2-2507. Authorization of funds.

There are hereby authorized to be appropriated such funds as may be necessary for the administration of this chapter. In addition, the Mayor shall reprogram and transfer to the Office of Criminal Justice Plans and Analysis, as constituted by this chapter, any and all property, records and unexpected balances of appropriated funds for the Office of Criminal Justice Plans and Analysis as created by Mayor's Orders 77-52 A and B. (Sept. 13, 1978, D.C. Law 2-107, § 8, 25 DCR 1391.)

Legislative History of Law 2-107. See note to § 2-2501.

CHAPTER 26.—COMMISSION FOR WOMEN

Sec.

2-2601. Statement of purpose.

2-2602. Establishment of the Commission.

Sec.

2-2603. Powers of the Commission.

2-2604. Administration.

§ 2-2601. Statement of purpose.

It is the purpose of this chapter to support programs directed toward evaluating and improving the status of women in the District of Columbia by establishing the Commission for Women. (Sept. 22, 1978, D.C. Law 2-109, § 2, 25 DCR 1456.)

Legislative History of Law 2-109. Law 2-109 was introduced in Council and assigned Bill No. 2-236, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 30, 1978 and June 13, 1978, respectively. Signed by the Mayor on July 13, 1978, it was

assigned Act No. 2-230 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Sept. 22, 1978, D.C. Law 2-109, 25 DCR 1456, provided: "That this act may be cited as the 'District of Columbia Commission for Women Act of 1978.'"

§ 2-2602. Establishment of the Commission.

(a) There is hereby established in the District of Columbia a Commission for Women (hereinafter referred to as the "Commission"). The Commission shall be composed of twenty-one (21) members appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the "Council"), from among the residents of the District of Columbia with experience in the areas of public affairs and issues of particular interest and concern to women, representative by geographic area and reflective by race and age of the population of the District of Columbia. The Commission shall be the successor to the Commission on the Status of Women established by Organization Order No. 38, Commissioner's Order No. 73-94a, effective April 24, 1973 (hereinafter referred to as the "Commission on the Status of Women").

(b) Members of the Commission shall be appointed to serve terms of three (3) years and shall serve until their successors are appointed. The present members of the Commission on the Status of Women shall be members of the Commission established by this chapter for the remainder of their current terms. A member of the Commission may be reappointed but may serve no more than two (2) consecutive full terms. Tenure on the Commission on the Status of Women shall count toward the consecutive two (2) full term limit on the Commission.

(c) Whenever a vacancy occurs on the Commission, the Mayor, with the advice and consent of the Council, shall, within ninety (90) working days of such vacancy, appoint a successor to fill the unexpired portion of the term.

(d) The Mayor shall designate from among the members appointed to the Commission, the Chairperson, who shall serve in that capacity at the pleasure of the Mayor.

(e) All members of the Commission shall serve without compensation: Except, that expenses incurred by the Commission as a whole or by its individual members, when duly authorized, shall become an obligation against appropriated District of Columbia funds designated for that purpose.

(f) The Mayor may remove, after notice and hearing, any member of the Commission for neglect of duty, incompetence, misconduct or malfeasance in office. (Sept. 22, 1978, D.C. Law 2-109, § 3, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

§ 2-2603. Powers of the Commission.

(a) The Commission shall conduct studies, review progress, develop, recommend and undertake action and initiate and conduct programs in areas including, but not limited to, the following:

- (1) elimination of discrimination based on sex and elimination of sex role stereotyping and bias;
 - (2) public and private employment practices, including matters pertaining to hours, wages and working conditions;
 - (3) education;
 - (4) equality of rights and responsibilities of men and women under the law;
 - (5) new and expanded services for women to facilitate their optimal functioning as homemakers, wage-earners and citizens, including mental and physical health care, and the improvement of facilities for child care and youth development.
- (b) The Commission is authorized to apply for and receive grants to fund its program activities in accordance with procedures relating to grants management.
- (c) The Commission may accept private gifts and donations to carry out the purposes of this chapter.
- (d) The Commission shall stimulate and encourage study and review of the status of women and may act as a clearinghouse for activities in the District of Columbia. (Sept. 22, 1978, D.C. Law 2-109, § 4, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

§ 2-2604. Administration.

- (a) The Commission shall appoint an Executive Director who shall be the chief administrative officer of the Commission. The Executive Director shall report regularly to the Commission on staff activities. The Executive Director shall receive annual rate of compensation fixed in accordance with chapter 51 of Title 5 of the United States Code.
- (b) Additional staff service for the Commission shall be supplied in accordance with positions and funding approved in the District of Columbia budget.
- (c) The Commission is authorized to establish rules and procedures for the conduct of its business, including the election of officers other than the Chairperson, as it deems necessary.
- (d) The Commission shall submit to the Mayor annual reports of its activities and the work carried on under its direction. (Sept. 22, 1978, D.C. Law 2-109, § 5, 25 DCR 1456.)

Legislative History of Law 2-109. See note to § 2-2601.

TITLE 3.—BOARD OF PUBLIC WELFARE

| Chap. | Sec. |
|--------------------------------------|-------|
| 1. Board of Public Welfare | 3-101 |
| 2. Public Assistance | 3-201 |
| 3. Day Care | 3-301 |

CHAPTER 1.—BOARD OF PUBLIC WELFARE

| Sec. |
|--|
| 3-105. Director of Public Welfare — Appointment and duties — Qualifications — Other employees. |

§ 3-105. Director of Public Welfare — Appointment and duties — Qualifications — Other employees.

The Mayor of the District of Columbia, upon the nomination of the Board, is hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this Act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Mayor of the District of Columbia upon recommendation of the Board. The Mayor of the District of Columbia is authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(ss), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the proviso which formerly appeared at the end of the present last sentence, and by deleting the former last two sentences.

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1366.1.

CHAPTER 2.—PUBLIC ASSISTANCE

| Sec. |
|---|
| 3-203.1. Eligibility for Medicaid benefits. |

§ 3-202. Categories and administration of public assistance.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the “District Supplement for Supplemental Security Income Recipients Authorization Act of 1979” (D.C. Law 3-2, June 7, 1979, 25 DCR 9635); the “Public Assistance Payments Act of 1979” (D.C. Law 3-3, June 7, 1979, 25

DCR 9639); and the “Standards of Assistance Relating to Persons Residing in Community Residence Facilities Act of 1979” (D.C. Law 3-23, Sept. 28, 1979, 26 DCR 402). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 3-203.1. Eligibility for Medicaid benefits.

The District of Columbia state plan required under Title XIX of the Social Security Act (Medicaid) (42 U.S.C. § 1396 et seq.) shall provide that all persons in the following categories are eligible for full Medicaid benefits:

- (a) all persons receiving Supplemental Security Income benefits;
- (b) all persons categorically related to the Supplemental Security Income (SSI) program (that is, aged, blind or permanently disabled) and receiving benefits under the Old Age and Survivors Disability Insurance (OASDI) program and who would be eligible for SSI benefits but for OASDI cost-of-living increases received since April 1977; and

(c) all persons categorically related to the Supplemental Security Income program (that is, aged, blind or permanently disabled) whose monthly countable income, regardless of source, is equal to or less than the combined maximum monthly payment of SSI plus the District supplement for the person having no other income or resources.
(June 7, 1979, D.C. Law 3-2, § 3, 25 DCR 9635.)

Legislative History of Law 3-2. Law 3-2 was introduced in Council and assigned Bill No. 3-11, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on March 13, 1979

and March 27, 1979, respectively. Signed by the Mayor on April 13, 1979, it was assigned Act No. 3-23 and transmitted to both Houses of Congress for its review.

§ 3-204. Amount of public assistance.

Appropriations. Section 208 of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, provided that appropriations in title II of Pub. L. 96-93 shall be available for the payment of

public assistance without reference to certain requirements.

§ 3-209. Emergency public assistance.

NOTES TO DECISIONS

Cited in *Rorie v. District of Columbia Dep't of Human Resources* (D.C. 1979, 403 A.2d 1148).

§ 3-214. Hearings.

NOTES TO DECISIONS

Cited in *Rorie v. District of Columbia Dep't of Human Resources* (D.C. 1979, 403 A.2d 1148).

CHAPTER 3.—DAY CARE

| Sec. | Sec. |
|---|--|
| 3-301. Definitions. | Reimbursement — Annual report — |
| 3-302. Day care program authorized — Funding system for child development facilities. | Determination of eligibility — Retention of fees. |
| 3-303. Payment of full cost by Department. | 3-310. Schedule of payments by Department. |
| 3-304. Supplemental payments by Department. | 3-311. Standards for in-home care. |
| 3-305. Schedule of payments by parents. | 3-312. Compliance with District regulation. |
| 3-306. Responsibility of Department for payment. | 3-313. Monitoring day care services — Publication of procedures — Compliance with federal regulations. |
| 3-307. Recovery of overpayments. | 3-314. Authorization of grants to develop satellite child development home programs. |
| 3-308. Waiver of overpayments. | |
| 3-309. Contracts with licensed child development centers — Payment for services — | |

§ 3-301. Definitions.

As used in this chapter:

(a) The term “child” means an individual between the ages of birth and fifteen (15) years.

(b) The term “child development center” means a child development facility for more than five (5) children which provides a full day (more than four (4) but less than twenty-four (24) hours per day), part day (up to four (4) hours per day) or before and after school child development program, including such programs provided during school vacations.

(c) The term “child development home” means a private residence which provides a child development program for up to a total of five (5) children with no more than two (2) children younger than two (2) years of age in the group. The total of five (5) children shall not include those of the caregiver who are six (6) years or older: Except, that the total number of children

of the caregiver between the ages of six (6) and fifteen (15) shall not exceed three (3), and of those three (3) children, no more than two (2) shall be age ten (10) or younger. A child development home shall also include care given to a child by a caregiver related to the child. For the purpose of this subsection, "related" means any of the following relationships by marriage, blood, or adoption: Grandparent, brother, sister, step-sister, step-brother, uncle, and aunt.

(d) The term "Department" means the District of Columbia Department of Human Resources.

(e) The term "in-home care" means a child care program provided in a child's home by an in-home caregiver pursuant to section 3-311.

(Sept. 19, 1979, D.C. Law 3-16, § 2, 26 DCR 20.)

Legislative History of Law 3-16. Law 3-16 was introduced in Council and assigned Bill No. 3-7, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on May 22, 1979 and June 5, 1979, respectively. Signed by the Mayor on June 29, 1979, it was assigned Act No. 3-57 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Sept. 19, 1979, D.C. Law 3-16, provided: "That this act may be cited as the 'Day Care Policy Act of 1979.' "

Former chapter repealed. Section 16 of D.C. Law 3-16 repealed the "Day Care Policy Act" enacted by D.C. Law 1-131 and codified as former §§ 3-301 to 3-316.

§ 3-302. Day care program authorized — Funding system for child development facilities.

The Department is hereby authorized to provide a broad program of day care services for children of parents referred or approved by the Department for various training and work incentive programs, for children of other parents known to the Department where day care appears to be in the child's best interest, and for children of low-income families, otherwise unknown to the Department, where the parents are employed outside of the home. As a part of its broad program of day care services, the Department shall develop a funding system for all child development facilities serving such children consistent with the provisions of this chapter that will encourage such facilities to:

(a) provide a setting and a comprehensive program for the critically important early childhood development experience that will include, but not necessarily be limited to, educational, social, recreational, transportation, health, and nutritional services;

(b) provide services directed to the total well-being of the child and the stabilization of the family unit;

(c) provide a program which incorporates a broad-based parent and community participation component;

(d) provide a resource to enable parents to join or remain in the work force, participate in job training, and to attain self-sufficiency and independence for their families; and

(e) provide a program which protects children of working parents from neglect or inadequate care.

(Sept. 19, 1979, D.C. Law 3-16, § 3, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-303. Payment of full cost by Department.

The Department is hereby authorized to pay the full cost of day care for children identified through the following circumstances:

(a) Children of AFDC mothers referred to, enrolled in, and participating in the Work Incentive Program (WIN).

(b) Children of AFDC mothers in other goal oriented training programs; such programs being identified as those which include services of a job placement officer, social worker, counselor, or other special staff member who offers support and help in job finding and employment adjustment.

(c) Children of AFDC mothers who have completed training for the first three (3) months following placement in full time employment.

(d) Children of AFDC fathers or AFDC children who are living with caretaker relatives whose requirements are included in the public assistance grant and who are in training for employment.

(e) Children of AFDC mothers who are mentally retarded or who have a history of mental illness when day care is deemed to be in the child's best interest.

(f) Children of AFDC parents who are receiving extended treatment because of physical or mental problems, and day care is recommended by the treating facility.

(g) Children of AFDC mothers who are attending high school, until the mother receives a high school diploma or drops out of school. In the case of high school graduates, day care shall be continued for three (3) months after graduation occurs.

(h) Children of unwed mothers who live with one (1) or both parents or another caretaker relative, if the parent or parents or other caretaker relative either refuses to give care to the child or is unable to do so—until the mother receives a high school diploma, or reaches the age of eighteen (18), or drops out of school.

(i) Children who are approved for AFDC and live with caretaker relatives (not parents), and children approved for General Public Assistance and live with unrelated caretakers, when day care is required due to employment of the caretaker.

(j) Children of unemployed parents who are receiving vocational rehabilitation services, when day care is needed to allow them to engage in an established vocational rehabilitation program.

(k) Children receiving child protective services, if such children are not in foster care placement and day care is deemed to be in the child's best interest.

(l) Children who are medically certified by a licensed physician or treatment facility as physically handicapped or mildly retarded.

(m) Children eligible for day care under subsections (k) and (l) of this section shall receive priority consideration for any day care vacancy.

(Sept. 19, 1979, D.C. Law 3-16, § 4, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in section. 3-309.

§ 3-304. Supplemental payments by Department.

The Department is hereby authorized to supplement the payment for day care services by parents (paid directly to a child development center, child development home, or to an in-home caregiver according to a daily fee scale), whose gross annual income does not exceed the limits specified in the fee scale for the designated family size in section 3-305, under the following circumstances:

(a) Children of AFDC parents placed in employment through the Work Incentive Program (WIN) or other goal oriented training programs—after completion of three (3) months of such employment.

(b) Children of other single parents (in single parent households) when day care is needed due to the parent's employment.

(c) Children of working parents whose income is limited and the provision of day care services will enable the family to remain together.

(d) Children of parents who are receiving extended treatment due to physical or mental problems and day care is recommended by the treating facility.

(e) Children of employed parents who are receiving vocational rehabilitation services, when day care is needed to allow them to engage in an established vocational rehabilitation program.

(f) Children of parents who are enrolled in an employment and training program approved by the Mayor and who meet income eligibility requirements established by this chapter.

(Sept. 19, 1979, D.C. Law 3-16, § 5, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in section. 3-309.

§ 3-305. Schedule of payments by parents.

The scale for day care fees to be paid by parents shall be based on the following criteria:

(a) The daily rate of pay by parents, for children in day care, shall be based on family size, the family’s gross income as compared to median income specified by federal determination for services under Title XX of the Social Security Act (42 U.S.C. § 1397 et seq.), and a graduated percentage of costs of care as specified by payment rates established by sections 3-309 and 3-310.

(b) Day care shall be provided free for otherwise eligible children whose family’s gross income is less than fifty (50) percent of the median income, adjusted to family size, for the District of Columbia.

(c) Eligibility for subsidized care through the Department shall cease when the family’s gross income, adjusted to family size, is greater than eighty-five (85) percent of the specified median income.

(d) Parents shall pay a percentage of costs for each child in day care, on a graduated scale, as their gross income increases from fifty (50) to eighty-five (85) percent of the specified median income. The percentages for the five (5) graduated increments shall be four (4), eight (8), twelve (12), sixteen (16) and twenty (20) percent of the appropriate payment rates specified in sections 3-309 and 3-310, as shown in the chart below.

| Parent Payment: | Free | 4% of cost | 8% of cost | 12% of cost | 16% of cost | 20% of cost |
|---------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| When family income is: | 50% of median income | 57% of median income | 64% of median income | 71% of median income | 78% of median income | 85% of median income |

(Sept. 19, 1979, D.C. Law 3-16, § 6, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in sections. 3-304, 3-309.

§ 3-306. Responsibility of Department for payment.

The Department shall be responsible for payment of day care fees to:

(a) a child development home, after admission of a particular child, for its part of the appropriate rate for up to fifteen (15) consecutive days for that child when absence is caused by illness of the child or a change in the parent’s training status, provided the child is in regular attendance and the parent remains eligible or a space is being reserved;

(b) a child development center, unless at the end of a fiscal year, it is determined that an average attendance rate of eighty (80) percent for eligible children enrolled in the center was not maintained during the portion of the fiscal year (excluding District and federal holidays) for which the center has contracted to provide services, in which case the Department shall not be responsible for reimbursement of that proportion of its payment of day care fees for those days of non-attendance by eligible children resulting from an average attendance rate of less than eighty (80) percent; and

(c) an in-home caregiver only for those days when the in-home caregiver is present in the home of the mother or caretaker relative and rendering services as agreed.

(Sept. 19, 1979, D.C. Law 3-16, § 7, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-307. Recovery of overpayments.

An overpayment by the Department to a child development center, child development home, or to an in-home caregiver who is continuing to provide day care services shall be collectible in any amount. (Sept. 19, 1979, D.C. Law 3-16, § 8, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-308. Waiver of overpayments.

The collection of an overpayment of not more than twenty-five dollars (\$25.00) may be waived for child development centers, child development homes, or in-home caregivers who are no longer providing day care services for the Department. (Sept. 19, 1979, D.C. Law 3-16, § 9, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-309. Contracts with licensed child development centers — Payment for services — Reimbursement — Annual report — Determination of eligibility — Retention of fees.

The Department shall, on an annual basis, enter into contracts or agreements with licensed child development centers to provide day care services for children described in sections 3-303 and 3-304 who are two (2) years of age or older. Payment for such services shall be on the following basis:

(a) Subject to subsections (b) through (f) of this section, payments to such child development centers for care of these children shall be made on a monthly basis according to the following rates, effective October 1, 1979:

(1) Full Day Care—\$12.50 per day for each child, plus \$1 more per day when the center provides transportation.

(2) Part-time Care—\$6.25 per day for each child.

(3) No center shall be paid more than its stated rate, prior to application of its sliding fee scale, for non-DHR eligible children.

(b) For child development centers that reserve at least twenty-five (25) percent of their classroom capacity for children eligible for funding under this chapter, the Department shall, on or before August 1, 1979 for fiscal year 1980 and at least ninety (90) days prior to the beginning of each subsequent fiscal year, specify the number of spaces it projects will be utilized by children eligible for funding under this chapter during the next fiscal year, and provide written notification of its projection to each such center.

(c) Payment shall be made by the Department to child development centers for all such spaces specified for reservation in accordance with subsection (b) above, so long as they remain available and are able to be utilized by children eligible for funding under this chapter.

(d) Reimbursement by the Department to child development centers providing services on a year-round basis shall be based upon a 260-day year.

(e) The Department shall report to the Mayor and the Council of the District of Columbia, by July 1 each year, what impact the cost of living has had on the provision of day care services in the District during the preceding twelve (12) months, and what the monthly utilization has been during that same period in each category of day care paid for by the city.

(f) The Department shall delegate the function of determining the eligibility of children to be served by each child development center whenever:

(1) the center has requested to perform this function; and

(2) the Department has determined, based on the center's current performance of this function or otherwise, that the center has exhibited a reasonable capability to carry out such function.

(g) Child development centers may retain fees collected from parents of eligible children, as specified by the fee scale set forth in section 3-305, to be used by the centers to enrich the quality of services provided or to cover emergency expenditures approved by the Department. (Sept. 19, 1979, D.C. Law 3-16, § 10, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in section. 3-305.

§ 3-310. Schedule of payments by Department.

Payments to child development homes, or to in-home caregivers, shall be made according to the following rates, effective October 1, 1979:

(a) Full Day Care

(1) Child Development Homes—\$7.00 per child per day.

(2) In-home Care

(A) For care during the day, \$4.25 per child per day.

(B) For care during night hours, \$5.25 per child per night.

(b) Part-time Care

(1) Child Development Homes—\$4.50 per child per day for before and after school care.

(2) In-home Care

(A) Before and after school care, \$2.75 per child per day.

(B) For night care of less than six (6) hours, \$3.00 per child per night.

(Sept. 19, 1979, D.C. Law 3-16, § 11, 26 DCR 20).

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in section. 3-305.

§ 3-311. Standards for in-home care.

Guidelines and standards for in-home care shall be as follows:

(a) In-home care within the child's own home, by an in-home caregiver, shall be used only when other day care plans are not feasible and in-home care offers greater benefits to the mother or other responsible relative and the child.

(b) In-home care may be provided, as appropriate and available, for children of eligible persons in training and during their subsequent employment, and for AFDC children living with caretaker relatives (not parents) when day or night care is required due to employment of the caretaker relative.

(c) In-home care shall be arranged by mutual agreement between the child's own mother or caretaker relative, the in-home caregiver, and the Department.

(d) Selection of the in-home caregiver shall be made by the parent, subject to final approval by the Department.

(e) The Department shall make direct payments to the in-home caregiver for services rendered.

(f) The in-home caregiver shall be of an age between twenty-one (21) and seventy (70) years.

(g) The in-home caregiver shall furnish the Department with the same medical certification of good health as that required for licensed caregivers pursuant to section 403 (h) of Regulation No. 74-34 (Child Development Facilities Regulation). Further, the in-home caregiver shall furnish the Department with medical certification of good health for any child of her own whom she brings to the home of the mother or caretaker relative.

(h) Duties of the in-home caregiver shall be limited to supervision of the child or children in her care, preparation and serving of appropriate meals or snacks, and washing of dishes and utensils used in the preparation of food.

(i) The in-home caregiver shall have no more than two (2) preschool children of her own.

(j) The in-home caregiver shall not care for children other than her own and the child or children of the AFDC mother or caretaker relative.

(k) If the in-home caregiver brings her own children to the home of the AFDC mother or caretaker relative, an agreement shall be reached between them as to the amount of food she brings for their needs.

(l) The in-home caregiver shall have prior experience in child care, either with her own children or siblings.

(Sept. 19, 1979, D.C. Law 3-16, § 12, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.
Section referred to in section. 3-301.

§ 3-312. Compliance with District regulation.

Any child development center or child development home that contracts or agrees with the Department to provide day care shall comply with all applicable provisions of Regulation No. 74-34 (Child Development Facilities Regulation). (Sept. 19, 1979, D.C. Law 3-16, § 13, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-313. Monitoring day care services — Publication of procedures — Compliance with federal regulations.

(a) The Department shall be responsible for monitoring the provision of day care services to assure that adequate services are provided to the children and that contractual and other agreements are met.

(b) The Department shall develop and publish procedures that will assure that any licensed child development center or home in the District of Columbia can apply to provide day care services to eligible children.

(c) Child development facilities contracting or agreeing with the Department to provide day care, which are included in the programs for federal reimbursement, shall comply with all applicable federal regulations and requirements. (Sept. 19, 1979, D.C. Law 3-16, § 14, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

§ 3-314. Authorization of grants to develop satellite child development home programs.

The Department is hereby authorized to make grants, not to exceed \$15,000 per year per grantee, to licensed child development centers to develop satellite child development home programs for eligible children under the age of two (2) years. Up to \$100,000 of District appropriations for day care may be spent each year for this purpose. (Sept. 19, 1979, D.C. Law 3-16, § 15, 26 DCR 20.)

Legislative History of Law 3-16. See note to § 3-301.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

| Chap. | Sec. |
|---|--------|
| 1. Metropolitan Police | 4-101 |
| 4. Fire Department | 4-401 |
| 5. Police and Firefighters Retirement and Disability | 4-501 |
| 8. Salaries | 4-801 |
| 9. Miscellaneous Provisions | 4-901 |
| 10. Police and Firefighter Medical Care Recovery | 4-1001 |
| 11. Registration of State Officials Entering District | 4-1101 |

CHAPTER 1.—METROPOLITAN POLICE

§ 4-102. Police districts and precincts to be established by Council.

Section referred to in section. 1-362.3.

§ 4-103. Appointments — Civil service rules made applicable — Classification.

Section referred to in section. 1-362.3.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108).

§ 4-104. Oath of office.

Section referred to in section. 1-362.3.

§ 4-105. Service during probationary period — Discharge for unsatisfactory service — Retention equivalent to permanent appointment.

Section referred to in section. 1-362.3.

§ 4-106. Classification of officers and privates of police department — Duties of each.

Section referred to in section. 1-362.3.

§ 4-106a. Assistant to inspector commanding detective bureau — Rank and pay — Chief of detectives — Rank and pay.

Section referred to in section. 1-362.3.

§ 4-107. Age limits on original appointments.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the "Police Manual Amendment Act of 1979" (D.C. Law 3-32, Oct. 18, 1979, 26 DCR 778). These regulations are scheduled to be published by the Mayor in a

compilation of all current District of Columbia municipal regulations.
Section referred to in section. 1-362.3.

§ 4-108a. Allowance for use of private motor vehicles by inspectors.

Section referred to in section. 1-362.3.

§ 4-110. Detail of privates for dective work.

Section referred to in section. 1-362.3.

§ 4-111. Police not to be detailed as watchmen at municipal building.

Section referred to in section. 1-362.3.

§ 4-115. Special policemen — Appointment and compensation.

NOTES TO DECISIONS

Policeman within meaning of § 22-3205. — A special police officer, who has been commissioned pursuant to this section, will be considered a policeman or law enforcement officer within the meaning of § 22-3205 only to the extent

that he acts in conformance with the regulations governing special officers. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

§ 4-121. Rules and regulations — Fine, suspension, or dismissal of police — Charges to be heard by trial board.

Section referred to in section. 1-362.3.

NOTES TO DECISIONS

Procedure in employment discrimination cases. — Since officers of the Metropolitan Police Department do not occupy positions in the competitive service, their avenue to the courts for claims of employment

discrimination is 42 U.S.C. § 2000e-5, which calls for a charge filed first with the Equal Employment Opportunity Commission. *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108).

§ 4-122. Trial board — Appointment — Hearings — Findings — Appeals — Existing rules and regulations ratified.

Section referred to in section. 1-362.3.

NOTES TO DECISIONS

Where officer appealed to Mayor, trial board's decision became simply a recommendation, not a final

decision. *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108).

§ 4-123. Commissioner and major and superintendent of police may administer oaths.

Section referred to in section. 1-362.3.

§ 4-124. Police surgeons — Qualifications — Duties.

Section referred to in section. 1-362.3.

§ 4-125. Affiliation with organizations advocating strikes, prohibited — Penalties — Conspiracy to interfere with operation of police force — Right of resignation restricted.

Section referred to in section. 1-362.3.

§ 4-126. Police to respect and obey major and superintendent.

Section referred to in section. 1-362.3.

§ 4-127. Major and superintendent to make quarterly reports.

Section referred to in section. 1-362.3.

§ 4-128. Police exempt from military and jury service — Service of process.

Section referred to in section. 1-362.3.

§ 4-129. Rewards, presents, fee, or emoluments to police officers — Notice to Commissioner — Penalty for failure to give notice.

Section referred to in section. 1-362.3.

§ 4-130. Clothing to be uniform.

Section referred to in section. 1-362.3.

§ 4-131. Appropriations for clothing.

Section referred to in section. 1-362.3.

§ 4-132a. Residence requirements of members of Police Force and Fire Department.

Section referred to in section. 1-362.3.

§ 4-134. Records — General complaint files — Lost, missing, or stolen property — Personnel records of police.

Section referred to in section. 6-826.

NOTES TO DECISIONS

Cited in *District of Columbia v. Hudson* (D.C. 1979, 404 A.2d 175); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

§ 4-134a. Central criminal records.

Section referred to in section. 6-826.

§ 4-135. Records open to public inspection.**NOTES TO DECISIONS**

Cited in *District of Columbia v. Hudson* (D.C. 1979, 404 A.2d 175); *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

§ 4-137. Preservation and destruction of records.**NOTES TO DECISIONS**

Legislative intent. — The intent of Congress expressed in this section is that only the Commissioner (the predecessor of the Mayor) is empowered to order Metropolitan Police Department records destroyed.

District of Columbia v. Hudson (D.C. 1979, 404 A.2d 175).
Cited in *Lively v. Cullinane* (1976, 451 F. Supp. 999).

§ 4-152. Custody of stolen, lost, or abandoned property.**NOTES TO DECISIONS**

Cited in *United States v. Pannell* (D.C. 1978, 387 A.2d 736); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

§ 4-160. Sales at public auction — Procedure — Sales of motor vehicles with liens of record — Notice to lienors and lienees — Abandonment of liens — Notice to Recorder of Deeds — Application of proceeds of sale — Deposit of moneys in Treasury — Moneys and other property of insane persons excepted.

NOTES TO DECISIONS

Exclusivity of section's procedure. — This section contains the only sale procedure applicable to an impounded vehicle. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

Substitution of collateral security allowed. — Rather than creating a statutory lien, this section allows substitution of collateral security for the scofflaw's appearance in court. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

Only debts to be satisfied from auction of abandoned property under section are expenses of sale and custody. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

Payment of traffic tickets. — No provision is made for payment of traffic tickets out of the sale proceeds. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 4-182a. Details to band — Officers and members of United States Park Police and Executive Protective Service.

Section referred to in section. 1-362.3.

§ 4-183a. Retirement of Director — Conditions — Annuities — Appropriations.

Section referred to in section. 1-362.3.

§ 4-183b. Retirement of Director to be pursuant to provisions of sections 183a and 183b — Transfer of moneys from Civil Service Retirement and Disability Fund.

Section referred to in section. 1-362.3.

§ 4-186. Bonding of Metropolitan Police.

Section referred to in section. 1-362.3.

CHAPTER 4.—FIRE DEPARTMENT

§ 4-402. Rules and regulations — Appointments to be under civil service — Selection of chief engineer and deputy chief engineers — Original appointment and promotion of privates — Vacancies.

Section referred to in section. 1-362.3.

§ 4-403. Age limits on original appointments.

Section referred to in section. 1-362.3.

§ 4-404. Two-platoon system — Classification of officers — Police surgeons to attend members of fire department — May call veterinary surgeon — Transfer to new grades.

Section referred to in section. 1-362.3.

§ 4-404a. Workweek established — Hours — Days off — Holidays — Exceptions.

Section referred to in section. 1-362.3.

§ 4-406. Appropriations for clothing.

Section referred to in section. 1-362.3.

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CHAPTER 5.—POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY

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§ 4-502. Payment and deposit.

Commencing with July 1, 1935, and thereafter, all moneys on June 14, 1935, required to be deposited to the credit of the policemen and firemen's relief fund, District of Columbia, under section 4-503, shall be paid to the collector of taxes of the District of Columbia and deposited

in the treasury to the credit of the revenues of said District, except that all moneys required to be deposited with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812. (June 14, 1935, 49 Stat. 358, ch. 241, § 1; Nov. 17, 1979, Pub. L. 96-122, § 122(b)(2), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding the exception to the end of the section.
Effective date. Section 122 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment

to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.
Section referred to in section. 1-1812.

§ 4-504a. Credit for active service in military or naval forces.

In determining eligibility for the amount of benefits from the policemen and firemen's relief fund, District of Columbia, or the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by section 1-1812), each member of the Metropolitan Police Department of the District of Columbia, the United States Park Police force, the Executive Protective Service, the Fire Department of the District of Columbia, and each member of the United States Secret Service who has actively performed duties other than clerical for ten years or more directly related to the protection of the President, who shall have left active employment in any such department, force, or service to perform active service in the military or naval forces of the United States, shall be credited with all periods of honorable active military or naval service performed on or after September 16, 1940, and prior to the termination of the war as declared by Presidential proclamation or concurrent resolution of the Congress. (July 21, 1947, 61 Stat. 398, ch. 272; Nov. 17, 1979, Pub. L. 96-122, § 122(b)(3), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting "or the District of Columbia

Police Officers and Fire Fighters' Retirement Fund (established by section 1-1812)."

§ 4-518. Pension relief allowance or retirement compensation increase.

* * * * *

(e) This section shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who retire after the effective date of this subsection.
(As amended Nov. 17, 1979, Pub. L. 96-122, § 209 (c), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding subsection (e).
Effective date. Section 209 (d) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that subsection (e) shall

take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 4-521. Definitions.

Wherever used in sections 4-521 to 4-535 —

* * * * *

(4) The term "widower" means the surviving husband of a member or former member if, in the case of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, or the surviving husband of a member or former member who was a member or officer of the Metropolitan Police force or the Fire Department of the District of Columbia if —

- (A) he was married to such member or former member (i) while she was a member, or (ii) for at least one year immediately preceding her death, or
- (B) he is the father of issue by such marriage.

* * * * *

(17) The term “average pay” means the highest annual rate resulting from averaging the member’s rates of basic salary in effect over any thirty-six consecutive months of police or fire service in the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), or over any twelve consecutive months of police or fire service in the case of any other member, with each rate weighted by the time it was in effect, except that if the member retires under section 4-527 and if on the date of his retirement under the subsection he has not completed twelve consecutive months or thirty-six consecutive months, as the case may be, of police or fire service, such term means his basic salary at the time of his retirement.

(18) The term “adjusted average pay” means the average pay of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia increased by the per centum increase (adjusted to the nearest one-tenth of 1 per centum in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, between the month in which such member retires and the month immediately prior to the month in which such member dies.

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 201, 206 (a) (2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting “if, in the case of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, or the surviving husband of a member or former member who was a member or officer of the Metropolitan Police force or the Fire Department of the District of Columbia” in the introductory language of paragraph (4), by substituting “thirty-six” for “twelve” and inserting “in the case of a member who is an officer or member of the Metropolitan

Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), or over any twelve consecutive months of police or fire service in the case of any other member” and “or thirty-six consecutive months, as the case may be,” in paragraph (17), and by adding paragraph (18).

Section referred to in sections. 4-521.1, 4-523.

Cross reference. For definition of “retirement program,” see § 1-1802.

NOTES TO DECISIONS

Cited in Torvik v. Police & Firemen’s Retirement & Relief Bd. (D.C. 1979, 406 A.2d 1264).

§ 4-521.1. Application of amendments to sections 4-521 and 4-531.

The amendments made by Pub. L. 96-122, section 206 (a), to sections 4-521 and 4-531 shall apply with respect to survivor annuities under the Policemen and Firemen’s Retirement and Disability Act (D.C. Code, sec. 4-521 et seq.) for survivors of officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia which commence on or after the first day of the first month which begins after the end of the ninety-day period beginning on the date of enactment of this section. (Nov. 17, 1979, Pub. L. 96-122, § 206 (b), 93 Stat. 866.)

§ 4-523. Creditable service — Military and other government service.

* * * * *

(5) (A) A member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1) of section 4-521, if such member deposits a sum equal to the entire amount, including interest (if any), refunded to him

for such period of government service. A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall deposit such sum, plus interest computed in accordance with subparagraph (B), with the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812. All other members shall deposit such sums with the Mayor of the District of Columbia for credit to the revenues of the District of Columbia. If the member so elects, he may deposit the total amount of such refund in monthly installments not exceeding twenty-four, except that in the case of a member who is an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, such monthly installments shall be of equal amounts. No deposit shall be required for days of unused sick leave credited under section 4-528.

(B) Interest required on deposits under this paragraph for members who are officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be computed as follows:

(i) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by section 1-1812) for the period beginning on the first day of the first month which begins after the end of the service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the first monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum shall be used in determining the interest rate to be paid on deposits under this paragraph.

(ii) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the period of service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(iii) If a member elects to make his deposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(6) (A) Any period of time during which a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia is on approved leave without pay to serve as a full-time officer or employee of a labor organization shall be considered to be police or fire service for purposes of sections 4-521 to 4-535 if such member files an election in accordance with subparagraph (B) and makes payments as described in subparagraph (C). The basic salary in effect at any time for the grade in which a member was serving at the time he entered on approved leave described in the preceding sentence shall be considered to be the basic salary in effect for such member for purposes of sections 4-521 to 4-535 if the period of time when such member is on approved leave is considered to be police or fire service under this paragraph.

(B) To be eligible to have any period of approved leave described in subparagraph (A) considered to be police or fire service for purposes of sections 4-521 to 4-535, a member described in such subparagraph must, not later than the end of the sixty-day period commencing on the day such member enters on such approved leave or the effective date of this paragraph, whichever occurs later, file an election with the Mayor to have such period of approved leave considered to be police or fire service for purposes of sections 4-521 to 4-535.

(C) (i) To have any period of approved leave described in subparagraph (A) occurring after the effective date of sections 4-521 to 4-535 considered to be police or fire service, a member described in such subparagraph must each month deposit with the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812 a sum equal to one-twelfth the annual new-entrant normal cost of the annuity of a member receiving the basic salary in effect during such month for the grade in which such member was serving at the time such member entered on such leave.

(ii) To have any period of approved leave described in subparagraph (A) which occurred before the effective date of sections 4-521 to 4-535 considered to be police or fire service, a member described in such subparagraph must deposit with the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812, in a manner to be determined by the Mayor, a sum equal to the new-entrant normal cost of the annuity of a member receiving the basic salary in effect during the period of such leave for the grade in which such member was serving at the time such member entered on such leave.

(iii) The Mayor shall make an annual determination of the new-entrant normal cost for purposes of clauses (i) and (ii) according to information supplied by the actuary retained pursuant to section 1-1822.

(D) For purposes of this paragraph, the term "employee organization" means any organization of any kind, or any agency or employer representation committee or plan, in which members or officers of the Metropolitan Police force or the Fire Department of the District of Columbia participate and which exists for the purpose, in whole or in part, of dealing with the government of the District of Columbia concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(7) The total service of a member shall be the full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month.

(8) Notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this Act to such individual or to the surviving spouse or child is to be based, if such individual or the surviving spouse or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old-age or survivor's benefits under section 202 of the Social Security Act [42 U.S.C. § 402] based on such individual's wages and self-employment income. If in the case of the individual or the surviving spouse such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in section 216 (a) of the Social Security Act [42 U.S.C. § 416 (a)]) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the Mayor shall redetermine the aggregate period of service upon which such annuity is based, effective as of the first day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health, Education, and Welfare shall, upon the request of the Mayor, inform the Mayor whether or not any such individual or the surviving spouse or child is entitled at any specified time to such benefits.

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 202 (a), 208 (a) (2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by rewriting paragraph (5), by redesignating former paragraphs (6) and (7) as present paragraphs (7) and (8) and by inserting present paragraph (6).

Effective date. Section 202 (b) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that present paragraph (6)

and the redesignation of former paragraphs (6) and (7) as present paragraphs (7) and (8) shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 1-1812, 4-523.1.

§ 4-523.1. Application of amendment to section 4-523.

The amendments made by Pub. L. 96-122, section 208 (a) (2), to section 4-523 shall not apply with respect to deposits made, in whole or in part, prior to the end of such ninety-day period. (Nov. 17, 1979, Pub. L. 96-122, § 208 (b), 93 Stat. 866.)

§ 4-524. Deductions, deposits and refunds — Order of persons entitled to refunds for deductions.

(1) On and after the first day of the first pay period which begins on or after the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970 there shall

be deducted and withheld from each member's basic salary an amount equal to 7 per centum of such basic salary. In the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, such deductions and withholdings shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) and shall be deposited in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by section 1-1812; and in the case of any other member, such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(2) (A) Any member who is an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, who is separated from his department, except for retirement as authorized by sections 4-521 to 4-535, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(B) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia with less than five years of police or fire service who is separated from his department, except for retirement under section 4-526, 4-527, or 4-528, shall be refunded the amount of the deductions made from his salary under sections 4-521 to 4-535. The receipt of payment of such deductions by such member shall void all annuity rights under sections 4-521 to 4-535, except that if such member is subsequently reappointed to any department whose members come under sections 4-521 to 4-535 and such member elects, at the time of such reappointment, to redeposit the amount refunded to him pursuant to the preceding sentence plus interest computed in accordance with section 4-531.1 (3), then credit shall be allowed under sections 4-521 to 4-535 for the prior period of service. Such redeposit (and the interest required thereon) may be made, at the election of the member, in a lump sum or in not to exceed 60 monthly installments, except that if such member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(3) In order to facilitate the settlement of the accounts of each member coming under the provisions of sections 4-521 to 4-535 who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the Commissioner shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the beneficiary or beneficiaries designated in writing by such member, filed with the Commissioner and received by him prior to the death of such member;

Second, if there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such member, or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member: Provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(4) In order to facilitate the settlement of the accounts of each former member coming under the provisions of section 4-521 to 4-535 who dies (1) leaving no survivor entitled to receive an annuity under the provisions of sections 4-521 to 4-535 and (2) before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the Commissioner shall pay the difference to the person

or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery and any other person of the amount so paid:

First, to the beneficiary or beneficiaries designed in writing by such former member, filed with the Commissioner and received by him prior to the death of such former member;

Second, if there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such former member, or the survivor of them; and

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: Provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto. (Sept. 1, 1916, ch. 433, § 12(d), as added Aug. 21, 1957, 71 Stat. 393, Pub. L. 85-157, § 3, and amended Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-693, § 1; Oct. 26, 1970, Pub. L. 91-509, § 1(13), 84 Stat. 1136; Nov. 17, 1979, Pub. L. 96-122, § 122 (b) (1), 208 (a) (1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding “In the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, such deductions and withholdings shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) and shall be deposited in the District of Columbia Police Officers and Fire Fighters’ Retirement Fund established by section 1-1812; and in the case of any other member” to the beginning of the last sentence of paragraph (1), by redesignating the provisions of paragraph (2) as subparagraph (A) and adding subparagraph (B) in that paragraph, by substituting “who is an officer or member of the United States Park Police force, the Executive

Protective Service, or the United States Secret Service Division” for “coming under the provisions of section 4-521 to 4-535” in the first sentence of paragraph (2) (A), by adding the exception to the end of the proviso in the last paragraph of paragraph (3), and by deleting “after retirement” preceding “(1)” and in the first paragraph and adding the exception to the end of the proviso in the last paragraph of paragraph (4).

Effective date. Sections 122 (c) and 208 (b) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 886, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 1-1812, 4-531.1.

§ 4-526. Retirement for disability not incurred in performance of duty.

(1) Except as provided in paragraph (2), whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his average pay for each year or portion thereof of his service: Provided, that such annuity shall not exceed 70 per centum of his average pay: Provided further, that the annuity of a member retiring under this section shall be at least 40 per centum of his average pay.

(2) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) completes five years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity which shall be 70 per centum of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with section 4-527 (5) (B) (ii), except that such annuity shall not be less than 30 per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12 (f), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3, and amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121 (b) (1), 88 Stat. 1040; Jan. 3, 1975, Pub. L. 93-635, § 10 (a), 88 Stat. 2177; Nov. 17, 1979, Pub. L. 96-122, § 204 (b) (1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by designating the formerly undesignated provisions of this section as paragraph (1),

by adding "Except as provided in paragraph (2)" at the beginning of paragraph (1), and by adding paragraph (2).

Section referred to in sections. 1-1825, 4-524, 4-527, 4-530, 4-531.1, 4-533.

NOTES TO DECISIONS

Cited in Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd. (D.C. 1978, 384 A.2d 29).

§ 4-527. Retirement for disability while performing or not performing duty.

(1) Except as provided in paragraph (5), whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of $2\frac{1}{2}$ per centum of his average pay for each year or portion thereof of his service: Provided, that such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than $66\frac{2}{3}$ per centum of his average pay.

(2) In any case involving a member who is an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, in which the proximate cause of injury incurred or disease contracted by the member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of $2\frac{1}{2}$ per centum of his average pay for each year or portion thereof of his service: Provided, that such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than $66\frac{2}{3}$ per centum of his average pay.

* * * * *

(4) A member who is an officer or member of the Metropolitan Police force of the Fire Department of the District of Columbia may not retire and receive an annuity under this section on the basis of the aggravation in the performance of duty of an injury incurred or a disease contracted in the performance of duty unless —

(A) in the case of the aggravation of a disease, the disease was reported to the Board of Police and Fire Surgeons within thirty days after the disease was first diagnosed; or

(B) in the case of the aggravation of an injury, the injury was reported to the Board of Police and Fire Surgeons within seven days after the injury was incurred or, if the member was unable (as determined by such Board) as a result of the injury to report the injury within such seven-day period, within seven days after the member became able (as determined by such Board) to report the injury.

The burden of establishing inability to report an injury in accordance with subparagraph (B) within seven days after such injury was incurred and of establishing that such injury was reported within seven days after the end of such inability shall be on the member claiming such inability. Any report under this paragraph shall include adequate medical documentation. Nothing in this paragraph shall be deemed to alter or affect any administrative regulation or requirement of the Metropolitan Police force or the Fire Department of the District of Columbia with respect to the reporting of an injury incurred or aggravated, or any disease contracted or aggravated, in the performance of duty.

(5) (A) Whenever any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after

appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed in accordance with subparagraph (B).

(B) (i) In the case of any member who retires under this paragraph or paragraph (2) of section 4-526, the Board of Police and Fire Surgeons shall determine, within a reasonable time and in accordance with regulations which the Mayor shall promulgate, the percentage of impairment for such member and shall report such percentage of impairment to the Police and Firemen's Retirement and Relief Board.

(ii) In the case of any member described in clause (i), the Police and Firemen's Retirement and Relief Board shall determine within a reasonable time the percentage of disability for such member giving due regard to —

(I) the nature of the injury or disease,

(II) the percentage of impairment reported pursuant to clause (i),

(III) the position in the Metropolitan Police force or the Fire Department of the District of Columbia held by the member immediately prior to his retirement,

(IV) the age and years of service of the member, and

(V) any other factors or circumstances which may affect the capacity of the member to earn wages or engage in gainful activity in his disabled condition, including the effect of the disability as it may naturally extend into the future.

(iii) The percentage of impairment or the percentage of disability for a member to whom this paragraph applies may be redetermined at any time prior to the time such member reaches the age of fifty and his annuity shall be adjusted accordingly.

(iv) The annuity of a member who is retired under this paragraph shall be 70 per centum of his basic salary at the time of retirement multiplied by the percentage of disability for such member as determined in accordance with clause (ii), except that such annuity shall not be less than 40 per centum of his basic salary at the time of retirement.

(v) For purposes of this paragraph —

(I) the term "impairment" means any anatomic or functional abnormality or loss existing after maximal medical rehabilitation has been achieved; and

(II) the term "disability" means any actual or presumed reduction in or absence of ability to engage in gainful activity which is caused, in whole or in part, by an impairment.

(6) Not later than ninety days after the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the Board of Police and Fire Surgeons shall submit to the Mayor recommendations for regulations to establish specific criteria for determining whether an injury was incurred, or a disease was contracted, in the performance of duty and whether an injury or disease was aggravated in the performance of duty. The Mayor shall promulgate regulations establishing such criteria in a timely manner based on the recommendations of the Board.

(7) (A) In making determinations under this section and under section 4-526, the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall make full use of the medical resources in the District of Columbia and shall make the widest practical use of the medical expertise available to them consistent with fair and even administration of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.).

(B) Not later than ninety days after the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the Board of Police and Fire Surgeons and the Police and Firemen's Retirement and Relief Board shall each submit to the Mayor recommendations for regulations to carry out the requirements of subparagraph (A). The Mayor shall, in a timely manner and based on the recommendations of such Boards, promulgate regulations to carry out the requirements of such subparagraph.

(C) Failure to promulgate such regulations, or failure to comply with such regulations, shall not invalidate any decision of the Mayor or the Police and Firemen's Retirement and Relief Board with respect to the retirement of any individual.

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 204 (a), (b)(2), 213, 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding “Except as provided in paragraph (5)” at the beginning of paragraph (1), by inserting “involving a member who is an officer or member of the United States Park Police force, the Executive

Protective Service, or the United States Secret Service Division” and substituting “the” for “a” preceding “member” in the first sentence of paragraph (2), and by adding paragraphs (4) through (7).

Section referred to in sections. 1-1825, 4-524, 4-526, 4-527.1, 4-530, 4-531.1, 4-533.

NOTES TO DECISIONS

Claimant has burden of establishing on-duty aggravation of his injury or disease, and he is not entitled to a favorable presumption upon a court's review of the evidence. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Proof of proximate cause of disability. — Where a claimant makes a showing of a service-incurred injury, the opposing side must then offer evidence disproving the logical inference that the ensuing disability was the long-term result of such injury. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Only if substantial evidence exists which could be said to disprove the inference of causation of a disability by an on-duty injury must a reviewing court uphold a finding by the Board that the government has met its burden of proof and dispelled the inference. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Evidence insufficient to support Board's finding. — *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29).

Cited in *Torvik v. Police & Firemen's Retirement & Relief Bd.* (D.C. 1979, 406 A.2d 1264).

§ 4-527.1. Application of amendment to section 4-527.

The amendment made by Pub. L. 96-122, section 204(a)(1), to section 4-527 shall not apply with respect to officers and members of the Metropolitan Police force or the Fire Department of the District of Columbia who apply for disability retirement under section 4-527 prior to the end of the ninety-day period beginning on the date of the enactment of this section. The amendment made by Pub. L. 96-122, section 204 (a)(2), to section 4-527 shall not apply with respect to injuries incurred or diseases first diagnosed prior to the end of such ninety-day period. (Nov. 17, 1979, Pub. L. 96-122, § 204 (c), 93 Stat. 866.)

§ 4-528. Optional retirement — Conditions — Suspension of retirement provisions during emergency — Credit for unused sick leave.

(1) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and who completes twenty-five years of police or fire service and attains the age of fifty years and any other member (other than a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who first becomes such a member after the end of such ninety-day period) who completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½ per centum of his average pay for each year of service; except that the rate of 3 per centum of his average pay shall be used to compute each year's police or fire service in excess of (A) twenty-five years, in the case of a member who becomes a member after the end of such ninety-day period, or (B) twenty years, in the case of any other member: Provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: Provided further, that whenever the Mayor or the Chief of the Executive Protective Service, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service Division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph, then the Mayor or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(2) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of sixty years shall, in the discretion of the Commissioner, and any member of the Executive Protective Service or of the United States Park Police force or of the United States Secret Service Division to whom sections 4-521 to 4-535 apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed under paragraph (1).

(3) No annuity granted under paragraph (1) or (2) shall exceed 80 per centum of the basic salary of such member at the time of retirement.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, § 203, 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in paragraph (1), by substituting "twenty-five" for "twenty", and by inserting "who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and first becomes such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and", "attains the age of fifty years and any other member (other than a member who is an officer or member of the Metropolitan Police force or the Fire

Department of the District of Columbia who first becomes such a member after the end of such ninety-day period) who completes twenty years of police or fire service", "(A) twenty-five years, in the case of a member who becomes a member after the end of such ninety-day period, or (B)" and "in the case of any other member", all preceding the first proviso, by substituting "under" for "in" in paragraph (2), and by deleting "of this section" following "(2)" in paragraph (3).

Section referred to in sections. 4-523, 4-524, 4-531, 4-531.1.

§ 4-530. Recovery from disability or restoration to earning capacity — Earning capacity defined — Suspension of annuity — Restoration to duty.

(1) If any annuitant retired under section 4-526 or 4-527, before reaching the age of fifty, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease — (A) upon reemployment in the department from which he was retired, (B) forty-five days from the date of the medical examination showing such recovery, (C) forty-five days from the date of the determination that he is so restored, or (D) in the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first became such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), upon a refusal by such annuitant to accept an offer of reemployment in the department from which he was retired at the same grade or rank as he held at the time of his retirement, whichever is earliest. Earning capacity shall be deemed restored if, in each of two succeeding calendar years in the case of an annuitant who was an officer or member of the United States Park Police force, Executive Protection Service, or the United States Secret Service Division, or in any calendar year in the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, the income of the annuitant from wages or self-employment or both shall be equal to at least 80 per centum of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80 per centum of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter: Provided, that whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

* * * * *

(3) (A) If any annuitant who is retired under section 4-526 or 4-527, who prior to such retirement was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, and who first became such a member after the end of the ninety-day

period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), receives, directly or indirectly, income from wages or self-employment, or both, in any calendar year after the calendar year in which he retired —

(i) in an amount in excess of the difference between 70 per centum of the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this paragraph, then (except as provided in subparagraph (D)) the annuity of such annuitant shall be reduced by 50 cents for each \$1 of such income received during such year in excess of such difference; and

(ii) in an amount in excess of the difference between the current earnings limitation and the amount of annuity payable to such annuitant during such year under each such section prior to the reductions provided for in this paragraph, then (except as provided in subparagraph (D)) the annuity of such annuitant shall be further reduced by 20 cents for each \$1 of such income received during such year in excess of such difference.

(B) For the purposes of subparagraph (A), the term “current earnings limitation”, with respect to an annuitant, means the greater of —

(i) the current annual salary for the position which such annuitant held immediately prior to the retirement of such annuitant; or

(ii) the current entry level salary for active officers and members, divided by .7.

(C) The reductions provided for in subparagraph (A) shall be made as follows:

(i) Such reductions shall be pro rated over a period of twelve consecutive months, with equal amounts withheld from each payment of annuity during such twelve-month period.

(ii) The twelve-month period during which such reduction is made shall begin as soon after the end of the calendar year involved as is administratively practicable (as determined in accordance with regulations which the Mayor of the District of Columbia shall promulgate).

(D) If the Mayor of the District of Columbia determines that the level of income of an annuitant whose annuity would otherwise be reduced in accordance with subparagraph (A) has decreased significantly (other than in accordance with normal income fluctuations for such annuitant) during the period in which such reduction would occur, the Mayor may authorize the withholding during such period, or any portion thereof, of such lesser amount than the amount prescribed in such subparagraph as the Mayor considers appropriate or the Mayor may waive the requirements of subparagraph (A) if he finds that circumstances justify such waiver.

(E) (i) Any annuitant who is retired under section 4-526 or 4-527 and who prior to such retirement was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall, at such times as the Mayor of the District of Columbia shall by regulation prescribe, submit to the Mayor a notarized statement containing such information as the Mayor shall by regulation require with respect to the income received by such annuitant from wages or self-employment, or both. After examining such statement, the Mayor may require such annuitant to submit to the Mayor a further notarized statement containing such additional information with respect to the income received by such annuitant from wages or self-employment, or both, as the Mayor deems appropriate.

(ii) Any annuitant described in clause (i) who willfully furnishes materially false information with respect to his income in any statement required to be submitted under such clause shall forfeit all rights to his disability annuity. Any such annuitant who refuses or otherwise willfully fails to timely submit such statement as required by this section, payment of the annuity of such annuitant shall cease and such annuitant shall not be eligible to receive such annuity or part thereof for the period beginning on the date after the final day for timely filing of such statement and ending on the date on which the Mayor receives such statement. Nothing in this clause shall affect any rights to a survivor's annuity under section 4-531 based upon the service of such annuitant.

(As amended Nov. 17, 1979, Pub. L. 96-122, § 205 (a), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in the first sentence of paragraph (1), by

substituting “(A)” for “(1)”, “(B) forty-five days” for “(2) one year” and “(C) forty-five days” for “or (3) one year” and adding subparagraph (D), by inserting “in the case of

an annuitant who was an officer or member of the United States Park Police force, Executive Protection Service, or the United States Secret Service Division, or in any calendar year in the case of an annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia" in the second sentence of paragraph (1), and by adding paragraph (3).

Effective date. Section 205 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of enactment of Pub. L. 96-122.

Section referred to in sections. 1-1825, 4-530.1, 4-533.

§ 4-530.1. Application of amendment to section 4-530.

The amendment made by Pub. L. 96-122, section 205(a)(2)(B), to section 4-530 shall apply with respect to income from wages or self-employment, or both, received directly or indirectly during calendar year 1979 or the calendar year after the year in which the member retires, whichever is later, and any calendar year thereafter. (Nov. 17, 1979, Pub. L. 96-122, § 205 (c), 93 Stat. 866.)

§ 4-531. Survivor benefits and annuities — Amount — To whom payable — Election of type of annuity.

* * * * *

(2) In case of the death of any member before retirement, of any former member after retirement, or of any member entitled to receive an annuity under section 4-531.1 (regardless of whether such member is receiving such annuity at the time of death), leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of (1) 40 per centum of such member's average pay at the time of death, or 40 per centum (A) of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed in the case of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Division, or (B) of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia; or (2) 40 per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death: Provided, that such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(3) Each surviving child or student-child of any member who dies before retirement, of any former member who dies after retirement, or of any member entitled to receive an annuity under section 4-531.1 (regardless of whether such member is receiving such annuity at the time of death), shall be entitled to receive an annuity equal to the smallest of —

(A) in the case of a member or former member who is survived by a wife or husband —

(i) 60 per centum of —

(I) the member's average pay at the time of death, or

(II) the basis upon which the former member's annuity at the time of death was computed in the case of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(ii) \$1,548; or

(iii) \$4,644 divided by the number of eligible children; and

(B) in the case of a member or former member who is not survived by a wife or husband —

(i) 75 per centum of —

(I) the member's average pay at the time of death, or

(II) the basis upon which the former member's annuity at the time of death was computed in the case of a member who was an officer or member of the United States Park Police force,

the Executive Protective Service, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(ii) \$1,860; or

(iii) \$5,580 divided by the number of eligible children.

* * * * *

(6) Any member retiring under section 4-526, 4-527, or 4-528 may at the time of such retirement, and any member entitled to receive an annuity under section 4-531.1 may at the time such annuity commences, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after such member's death: Provided, that the person so designated be the surviving spouse or child of such member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such member is reduced. The annuity payable to the member making such election shall be reduced by 10 per centum of the annuity computed as provided in section 4-526, 4-527, or 4-528. Such increase in annuity payable to the designee shall be reduced by 5 per centum for each full five years the designee is younger than the member, but such total reduction shall not exceed 40 per centum. The increase in annuity payable to the designee pursuant to this paragraph shall be paid in addition to the annuity provided for such designee pursuant to paragraph (2) or (3) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to paragraphs (2), (3), and (5) of this section. If, at any time after such former member's election, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in section 4-526, 4-527, 4-528, or 4-531.1, as the case may be.

(7) Repealed. Nov. 17, 1979, Pub. L. 96-122, § 209 (b), 93 Stat. 866.

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 206 (a)(1), 207 (a)(2), 209 (b), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in paragraph (2), by deleting "or" following "before retirement" and inserting "or of any member entitled to receive an annuity under section 4-531.1 (regardless of whether such member is receiving such annuity at the time of death)", "(A)", and "in the case of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, or (B) of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia." The section was further amended by rewriting paragraph (3), by inserting "and any member entitled to receive an annuity under section 4-531.1 may at the time such annuity commences" and substituting "such member's" for "the retired annuitant's" and "such" for

"the retiring" in the first sentence of paragraph (6), by deleting "retiring" preceding "member" in the second and fourth sentences of that paragraph, by substituting "election" for "retirement" and "4-528, or 4-531.1, as the case may be" for "or 4-528" in the last sentence of paragraph (6), and by repealing paragraph (7).

Effective date. Section 207 (b) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to paragraphs (2), (3), and (6) of this section by section 207(a)(2) of Pub. L. 96-122 shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122, and section 209 (d) of Pub. L. 96-122 provided that the repeal of paragraph (7) of this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 4-521.1, 4-530, 4-531.2, 4-531.3, 4-533.

§ 4-531.1. Deferred annuities.

(1) Except as provided in paragraph (2), any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes five years of police or fire service and who is thereafter separated from his department, except for retirement under section 4-526, 4-527, or 4-528, shall be entitled to an annuity commencing on the first day of the month during which such member attains the age of fifty-five or on the first day of the first month beginning after such member's separation from his department, whichever month occurs later. Such annuity shall be computed at the rate of 2½ per centum of his average pay for each year of service up to twenty years of service and at the rate of 3 per

centum of his average pay for each year of service after twenty years of service, or, in the case of a member who first became such a member after the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), after twenty-five years of service, except that such annuity may not exceed 80 per centum of the average pay of such member.

(2) (A) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes five years of police or fire service and who is thereafter separated from his department (other than a member who retires under section 4-526, 4-527, or 4-528) may elect, at the time of his separation, to receive a refund of the amount of deductions made from his salary under sections 4-521 to 4-535. Receipt of such refund by the member shall void all annuity rights under sections 4-521 to 4-535.

(B) (i) Any member who, by electing to receive a refund under subparagraph (A), loses annuity rights under sections 4-521 to 4-535, may reestablish all such rights at any time prior to attaining the age of fifty-five by redepositing the amount of such refund plus interest computed in accordance with paragraph (3).

(ii) If any member who receives a refund under subparagraph (A) is subsequently reappointed to any department whose members come under sections 4-521 to 4-535 and elects, at the time of such reappointment, to redeposit the amount refunded to him under subparagraph (A) plus interest computed in accordance with paragraph (3), then credit shall be allowed under sections 4-521 to 4-535 for such member's prior period of service. Such redeposit (and the required interest thereon) may, at the election of the member, be made in a lump sum or in not to exceed 60 monthly installments, except that if the member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(3) The interest which is required by paragraphs (2) (B) (i) and (ii) of this section and by paragraph (2) (B) of section 4-524 to be paid by a member who redeposits the amount of previously refunded deductions shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by section 1-1812) for the period beginning on the first day of the first month which begins after the end of the service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund if he makes a lump sum payment or during which he makes the first monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on redeposits under sections 4-521 to 4-535.

(B) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the period of service with respect to which the redeposit is made and ending on the last day of the month which precedes the month during which he redeposits the refund.

(C) If a member elects to make his redeposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(Nov. 17, 1979, Pub. L. 96-122, § 207 (a) (1), 93 Stat. 866.)

Effective date. Section 207 (b) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 4-524, 4-531.

§ 4-531.2. Cost-of-living adjustments of annuities.

(1) Each month the Mayor of the District of Columbia shall determine the per centum change in the price index. On the basis of this determination, and effective the first day of the third month which begins after the price index shall have equaled the rise of at least 3 per centum for three consecutive months over the price index for the base month each annuity payable under sections 4-521 to 4-535 which —

(A) is payable to a survivor of a member who was an officer or member of the United States Park Police force, the Executive Protective Service, or the United States Secret Service Division, and

(B) has a commencing date on or before such effective date, shall be increased by 1 per centum plus the per centum rise in the price index. For purposes of this paragraph, the term “base month” means the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under this paragraph, except that, until the first cost-of-living annuity increase under this paragraph, the base month shall be the last month which was the base month for purposes of section 4-531 (7).

(2) With respect to any annuity payable under sections 4-521 to 4-535 which is payable to a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, or to a survivor of any such member, the Mayor shall —

(A) on January 1 of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for December of the preceding year over the price index published for June of the preceding year, and

(B) on July 1 of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for June of such year over the price index published for December of the preceding year.

(3) If in any year the per centum change determined under either paragraph (2) (A) or (2) (B) indicated a rise in the price index, then —

(A) in the case of an increase under paragraph (2) (A), (i) each annuity described in paragraph (2) having a commencing date not later than March 1 of such year shall, effective such March 1, be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, and (ii) each annuity described in such paragraph having a commencing date after such March 1 but before the effective date of the next increase in annuities under this paragraph shall, effective such commencing date, be increased by such per centum change, adjusted to the nearest one-tenth of 1 per centum, or

(B) in the case of an increase under paragraph (2) (B) (i) each annuity described in paragraph (2) having a commencing date not later than September 1 of such year shall, effective such September 1, be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, and (ii) each annuity described in such paragraph having a commencing date after such September 1 but before the effective date of the next increase in annuities under this paragraph shall, effective such commencing date, be increased by such per centum change, adjusted to the nearest one-tenth of 1 per centum.

(4) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installment shall after adjustment reflect an increase of at least \$1.

(5) For purposes of this section, the term “price index” means the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics. (Nov. 17, 1979, Pub. L. 96-122, § 209 (a) (1), 93 Stat. 866.)

Effective date. Section 209 (d) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 4-531.3.

§ 4-531.3. Application of section 4-531.2.

Paragraphs (2) and (3) of section 4-531.2 shall apply (A) to any increase after the effective date of section 4-531.2 in annuities payable under section 4-531, except that with respect to the first date after the effective date of section 4-531.2 on which the Mayor is to determine a per centum change for the purpose of such an increase, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index published for the last month which was the base month for purposes of section 4-531 (7) before the repeal of such paragraph (7) by Pub. L. 96-122, section 209(b), and (B) to any increase in each annuity payable under the Policemen and Firemen's Retirement Disability Act (D.C. Code, sec. 4-521 et seq.) having a commencing date after the effective date of section 4-531.2. (Nov. 17, 1979, Pub. L. 96-122, § 209 (a) (2), 93 Stat. 866.)

§ 4-533. Duties of Mayor in retirement and annuity matters — Certification of physical condition of member — Written notice of hearing — Procedure at hearings — Subpoena — Contempt proceedings — Disability retiree to report employment and undergo medical examination.

* * * * *

(2) (A) If a member is retired under section 4-526 or 4-527 and is employed on or after the effective date of the District of Columbia Police and Firemen's Salary Act amendments of 1972, such member shall, in accordance with such regulations as the Mayor shall prescribe, notify the Mayor of the employment; and the Mayor shall, as soon as practicable after the receipt of such notice, require each such member to undergo a medical examination (satisfactory to the Mayor) of the disability upon which the member's retirement under such section is based. The Commissioner shall not require employment questionnaires under section 4-530 (3) (C) or the medical examination of such member under subparagraph (B) after such member reaches the age of fifty.

(B) The Mayor shall, by regulation, require any annuitant who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who retired before, on, or after the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) under section 4-526 or 4-527 to undergo, during each twelve-month period following the effective date of this subparagraph, at least one medical examination of the disability upon which the annuitant's retirement under section 4-526 or 4-527 is based. No such annuitant shall be required under such regulations to undergo a medical examination during any such twelve-month period during which the annuitant was required to undergo a medical examination under this section in connection with such annuitant's employment. Such annual examination shall be carried out by the Board of Police and Fire Surgeons or by a physician designated by the Board.

(C) Such regulations shall further provide for notification by the Board of Police and Fire Surgeons to each such annuitant as to the time and place for such examination and the consequences of failure to appear and submit to such examination.

(D) In any case in which the requirement to undergo a medical examination under sections 4-521 to 4-535 would impose on an annuitant an undue hardship because of the physical or mental condition of such annuitant, the Mayor, by regulation, shall provide other means sufficient to determine the continuance of the disability on which such annuitant's retirement under section 4-526 or 4-527 is based.

(E) Such regulations shall further provide that, in any case involving any such member so retired who refuses or otherwise fails to undergo any medical exam required by sections 4-521 to 4-535, payment of the annuity to such member shall cease and such member shall not be eligible to receive such annuity or any part thereof for any period commencing on the day next following the day on which such member was required to undergo such examination, and ending on the date on which such member undergoes such examination. Nothing in this paragraph shall be construed as affecting any rights to a survivor's annuity under section 4-531 based upon the service of such member.

(3) Except in a case of fraud against the District of Columbia, the Mayor may waive collection of any amount less than \$100 which was paid to an annuitant in excess of the amount to which such annuitant was entitled under sections 4-521 to 4-535.

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 205 (b), 210, 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by redesignating the former provisions of paragraph (2) as subparagraph (A) of paragraph (2), by adding subparagraphs (B), (C), (D) and (E) in paragraph (2), by adding paragraph (3), and by substituting "Commissioner" for "Mayor," "such member" for "he" and "fifty" for "50" and inserting "under section 4-530 (3)

(C)" and "under subparagraph (B)" in the last sentence of subparagraph (A) of paragraph (2).

Effective date. Section 205 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to paragraph (2) of this section shall take effect at the end of the ninety-day period beginning on the date of enactment of Pub. L. 96-122.

§ 4-533a. Police and Firemen's Retirement and Relief Board.

Section referred to in section. 1-1832.

§ 4-534. Payment of annuities — Order of payment on death of annuitant — Waiver.

(1) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, accrues monthly (except that an annuity accrues over any portion of a month after the commencing date of such annuity but before the first day of the next month and is payable for such month in an amount pro rated in a manner to be determined by the Mayor) and is payable on the first business day of the month after it accrues.

(2) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Mayor, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(3) Any person entitled to an annuity under sections 4-521 to 4-535 may decline to accept all or any part of such annuity by a waiver signed and filed with the Commissioner. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(4) In order to facilitate the settlement of the accounts of each person who, at the time of his death, was receiving or was entitled to receive an annuity under sections 4-521 to 4-535, the Commissioner shall pay all unpaid annuity due such person at the time of death to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the widow or widower of such person;

Second, if there be no surviving spouse, to the child or children of such person, and descendants of deceased children, by representation;

Third, if there be none of the above, to the parents of such person or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased person, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased person.

(5) Notwithstanding any other provision of law, the salary of any annuitant who first becomes entitled to an annuity under sections 4-521 to 4-535 after the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such annuitant's annuity under sections 4-521 to 4-535 and compensation for such employment is equal to the salary otherwise payable for the position held by such annuitant. (Sept. 1, 1916, ch. 433, § 12(n), as added Aug. 21, 1957, 71 Stat. 398, Pub. L. 85-157, § 3; Nov. 17, 1979, Pub. L. 96-122, §§ 211, 212, 214, 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting the exception contained within parentheses in paragraph (1), by redesignating

former paragraphs (2) and (3) as present paragraphs (3) and (4), by inserting present paragraph (2), and by adding paragraph (5).

CHAPTER 8.—SALARIES

Sec.

4-838, 4-839. [Repealed.]

§ 4-802. Salary increase denied if service unsatisfactory — Removal for inefficiency — Additional compensation for efficiency.

Section referred to in section. 1-362.3.

§ 4-807. Additional compensation for working on holidays.

Section referred to in section. 1-362.3.

§ 4-808. Holiday defined.

Section referred to in section. 1-362.3.

§ 4-809. Applicability to Executive Protective Service and United States Park Police force.

Section referred to in section. 1-362.3.

§ 4-821. Computation of rates of compensation.

Section referred to in section. 1-362.3.

§ 4-823. Salary Schedules — Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

Emergency Act Amendments.

1978 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 101 and 201 of the District of Columbia Police, Firefighters' and Teachers' Salary Act Amendments Emergency Act of 1978 (D.C. Act 2-160, Mar. 15, 1978, 24 DCR 8080); secs. 2, 3 and 5 of the First Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-245, Aug. 1, 1978, 25 DCR 1499); and secs. 2, 3 and 5 of the Second Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-294, Nov. 7, 1979, 25 DCR 5085).

1979 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 2, 3 and 5 of the Third Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 3-4, Feb. 14, 1979, 25 DCR 8698).

Increases in schedules and rates. Section 2 of act May 18, 1978, D.C. Law 2-76, 24 DCR 8067, provided:

"(a) (1) The Mayor of the District of Columbia shall ascertain the average percentage increase to be used by the President of the United States in adjusting rates of pay (to be effective October 1, 1977) under section 5305 (a) (2) of title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under section 5305 (c) of title 5 of the

United States Code, and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in section 101 of the District of Columbia Police and Firemen's Salary Act of 1958, approved August 1, 1958 (72 Stat. 481; D.C. Code, sec. 4-823 (a)), on the first pay period after October 1, 1977 to reflect the average percentage increase given to General Schedule employees, or if the alternative plan of the President of the United States becomes effective as provided in section 5305 of title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under the alternative plan of the President of the United States. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage increase of the Presidential adjustments of rates of pay under section 5305 (m) of title 5 of the United States Code.

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under this section shall be effective on and payable for the first day of the first pay period beginning on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay, which become effective under this act, shall be the rates of pay for each class and service step concerned as if those rates had been set by statute and shall remain in effect until amended by the Council of the District of Columbia.

(c) The rates of pay established under this act shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this act.

(d) The rates of pay that take effect under this act shall be published in the District of Columbia Register."

Section 3 of said act provided:

"(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the effective date of this act, except that such retroactive compensation or salary shall be paid:

(1) to officers or members of the Metropolitan Police Department of the District of Columbia and the Fire Department of the District of Columbia who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this act, for services rendered during such period; and

(2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5 of the United States Code (relating to settlement of accounts of deceased employees),

for services rendered during the period beginning on the first pay period which began on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training, and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

(c) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5 of the United States Code (relating to government employees' group life insurance), all changes in rates of compensation of salary which result from the enactment of this act shall be held and considered to be effective as of the effective date of this act."

Section 5 of said act provided:

"The process, authorized elsewhere in this act, whereby the salaries of the District of Columbia police and firefighters are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1977 and ending on September 30, 1978."

Section referred to in sections. 1-341.14, 1-362.3.

§§ 4-838, 4-839. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3207 (e), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 9.—MISCELLANEOUS PROVISIONS

§ 4-902. Seniority rights for policemen and firemen serving in armed forces — Reenlistment.

Section referred to in section. 1-362.3.

§ 4-903. Rank or grade of policemen or firemen serving in armed forces preserved — Restriction on compensation.

Section referred to in section. 1-362.3.

§ 4-904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and Executive Protective Service — Definitions — Compensatory time — Overtime pay.

Section referred to in section. 1-362.3.

§ 4-910. Reimbursement of certain tuition expenses of officers and members of the Metropolitan Police Force, Fire Department, Executive Protective Service, and United States Park Police.

Section referred to in section. 1-362.3.

CHAPTER 10.—POLICE AND FIREFIGHTER MEDICAL CARE RECOVERY.

| Sec. | Sec. |
|---|--|
| 4-1001. Definitions. | 4-1007. Effect of chapter on other rights of policemen or firemen. |
| 4-1002. Right of District to recover. | 4-1008. Injuries or diseases incurred or contracted prior to enactment of chapter. |
| 4-1003. Enforcement of right. | 4-1009. Authorization of appropriations. |
| 4-1004. Lien held by District: Recovery under lien. | |
| 4-1005. Promulgation of regulations by Mayor. | |
| 4-1006. Compromise, release or waiver of claim. | |

§ 4-1001. Definitions.

As used in this chapter, the term “Mayor” means the Mayor of the District of Columbia or his designated agent, and the term “person” means an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal or agent. (Aug. 17, 1978, D.C. Law 2-100, § 2, 25 DCR 288.)

Legislative History of Law 2-100. Law 2-100 was introduced in Council and assigned Bill No. 2-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-208 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Aug. 17, 1978, D.C. Law 2-100, 25 DCR 288, provided: “That this act may be cited as the ‘District of Columbia Medical Care Recovery Act of 1978.’ ”

§ 4-1002. Right of District to recover.

Whenever the District of Columbia is authorized or required by law to (a) furnish or pay the expenses for hospital, medical, surgical, dental care and treatment (including prostheses and medical appliances) or the funeral expenses of an officer or member of the Metropolitan Police Department or the Fire Department of the District of Columbia (hereinafter, “policeman or fireman”); or (b) extend leave of absence with pay to a policeman or fireman who is injured or suffers a disease under circumstances creating a tort liability upon a third person to pay damages therefor, whether or not received or contracted in the performance of duty, the District of Columbia shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages paid or to be paid during the leave of absence resulting therefrom, and shall as to such right, be subrogated to any right or claim which the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors has or have against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished, or for which payment has been or will be made, and the amount of wages based upon an authorized leave of absence paid or to be paid to such policeman or fireman. The Mayor may also require the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the District of Columbia to the extent of the District’s right or claim. (Aug. 17, 1978, D.C. Law 2-100, § 3, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.
Section referred to in section. 4-1006.

§ 4-1003. Enforcement of right.

To enforce such right, the District of Columbia may (a) intervene or join in any action or proceeding brought by the injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors, against the third person who is or may be liable in damages for the injury or disease; or (b) if such action or proceeding is not commenced within six (6) months after the first day in which care and treatment is furnished by the District of Columbia in connection with the injury or disease involved, institute and prosecute legal

proceedings in a District of Columbia, state or federal court, either alone (in its name or in the name of the injured policeman or fireman, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured policeman or fireman, his guardian, personal representative, estate, dependents or survivors against the third person who is liable for the injury or disease. Any employee of the District of Columbia who is required to appear as a party or witness in the prosecution of said action or proceeding is, when directed to participate in the preparation for trial or the trial thereof and while so engaged, in an active duty status. (Aug. 17, 1978, D.C. Law 2-100, § 4, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

Section referred to in section. 4-1006.

§ 4-1004. Lien held by District: Recovery under lien.

(a) The District of Columbia shall have a lien, to the amount of the reasonable value of the care and treatment, funeral expenses, and wage payments described in section 4-1002, upon any recovery of sum received or collected or to be collected by an injured or diseased policeman or fireman, his guardian, personal representative, estate, dependents, or survivors in a claim or action asserted or maintained by such policeman or fireman or his personal representative against a liable third person for damages.

(b) No such lien described above shall be effective, however, unless, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease, the District of Columbia shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written notice containing the name and address of the injured or diseased policeman or fireman, the date and approximate place of the accident or incident giving rise thereto and the name of the person alleged to be liable to the policeman or fireman for the injuries or disease received; or unless the District of Columbia shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person alleged to be liable to the policeman or fireman for the injuries or disease received, prior to the payment of any moneys to such injured or diseased policeman or fireman, his attorney, or personal representative as compensation for such injury or disease. Where the name of an insurance carrier for the third party tort-feasor is ascertained, the District of Columbia shall also mail a copy of such notice to such insurance carrier. Notice of the filing of the lien shall also be given to the injured or diseased policeman or fireman, or to his attorney or personal representative.

(c) Any person, including an insurance carrier, who, after the mailing of such notice, shall make any payment to such policeman or fireman or to his attorney or personal representative as compensation for the injury sustained or disease contracted without paying to the District of Columbia the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one (1) year from the date of payment to such policeman or fireman, his attorney, or personal representative, as aforesaid, be and remain liable to said District of Columbia for the amount which the District was entitled to receive under its lien, and the District of Columbia may, within such period, enforce its lien by an action against the person making any such payment.

(d) When a policeman or fireman or his attorney or personal representative receives, as a result of an action or proceeding brought by the policeman or fireman or on his behalf or a result of a settlement made by him or on his behalf, any moneys or other property in satisfaction of the liability of a third person for the injury sustained or disease contracted, such policeman or fireman or his attorney or personal representative, as the case may be, shall ascertain and pay to the District of Columbia the amount of its lien or so much thereof as can be realized out of any such recovery or settlement. Notwithstanding any other provision of law, whenever a policeman or fireman or his attorney or personal representative receives any payment as described in the preceding sentence and fails to pay to the District of Columbia the amount of

its lien, the District of Columbia is authorized to take appropriate action to recover from such policeman or fireman or his attorney or personal representative the amount of its lien, including but not limited to the right to counterclaim, setoff, or attach moneys or other property otherwise due and payable from the District of Columbia to said policeman or fireman, his guardian, personal representative, estate, dependents or survivors. (Aug. 17, 1978, D.C. Law 2-100, § 5, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

Section referred to in section. 4-1006.

§ 4-1005. Promulgation of regulations by Mayor.

The Mayor is authorized to promulgate rules and regulations to carry out the purposes of this chapter, including but not limited to regulations (a) with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished, or paid or to be paid; and (b) to provide procedures for distributing the proceeds from recoveries and settlements obtained by either the injured or diseased policeman or fireman or the District of Columbia: Provided, that in any event said policeman or fireman, or his guardian, personal representative, estate, dependents or survivors shall have the right to retain not less than one-fifth ($\frac{1}{5}$) of the net amount of any money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the lien of the District of Columbia. (Aug. 17, 1978, D.C. Law 2-100, § 6, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

Section referred to in section. 4-1006.

§ 4-1006. Compromise, release or waiver of claim.

To the extent prescribed by regulations under section 4-1005, the Mayor may (a) compromise or settle and execute a release of any claim which the District of Columbia has by virtue of the rights established by sections 4-1002, 4-1003, or 4-1004; or (b) for the convenience of the District of Columbia, or if the Mayor determines that collection would result in undue hardship upon the policeman or fireman who suffered the injury or disease resulting in care and treatment described in section 4-1002, or upon his dependents or survivors, waive any such claim in whole or in part. (Aug. 17, 1978, D.C. Law 2-100, § 7, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1007. Effect of chapter on other rights of policemen or firemen.

No action taken by the District of Columbia in connection with the rights afforded under this chapter shall operate to deny to the injured or diseased policeman or fireman recovery for any damages or portion thereof not covered by this chapter. (Aug. 17, 1978, D.C. Law 2-100, § 8, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1008. Injuries or diseases incurred or contracted prior to enactment of chapter.

Nothing in this chapter shall be deemed to apply to any hospital, medical, surgical, or dental care or treatment or wage payments based upon an authorized leave of absence which a policeman or fireman is receiving or is entitled to receive from the District of Columbia for an injury received or disease contracted prior to enactment of this chapter. (Aug. 17, 1978, D.C. Law 2-100, § 9, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

§ 4-1009. Authorization of appropriations.

Appropriations to carry out the purposes of this chapter, including funds for the advancement of costs and expenses for the enforcement of recoveries, are hereby authorized. (Aug. 17, 1978, D.C. Law 2-100, § 10, 25 DCR 288.)

Legislative History of Law 2-100. See note to § 4-1001.

CHAPTER 11.—REGISTRATION OF STATE OFFICIALS ENTERING DISTRICT.

Sec.

4-1101. Definitions.

4-1102. When required — Exceptions — Penalties —
Promulgation of regulations by Chief.

§ 4-1101. Definitions.

For purposes of this chapter:

(a) "State" means the several states of the United States, Puerto Rico, the Virgin Islands, American Samoa and Guam.

(b) "State official" means any agent, employee, or representative officially responsible for the administration and enforcement of laws of a state relating to alcoholic beverages, tobacco, and tobacco products.

(Sept. 9, 1978, D.C. Law 2-102, § 2, 25 DCR 303.)

Legislative History of Law 2-102. Law 2-102 was introduced in Council and assigned Bill No. 2-45, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-212 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 9, 1978, D.C. Law 2-102, 25 DCR 303, provided: "That this act may be cited as the 'State Revenue Officers Registration Act of 1978.'"

§ 4-1102. When required — Exceptions — Penalties — Promulgation of regulations by Chief.

(a) Notwithstanding any other law or provision of law, including any executive agreements or understandings, any State official coming into the District of Columbia:

(1) to enforce that State's laws relating to alcoholic beverages, tobacco or tobacco products, including any law levying a tax on alcoholic beverages, tobacco or tobacco products; or

(2) to conduct an investigation or surveillance or cause to be surveilled activities done in the District of Columbia relating to a possible violation of the laws of that State shall first register with the Chief of the Metropolitan Police Department of the District of Columbia (hereinafter referred to as the "Chief"). Such State official shall first register in person or in writing with the Chief seventy-two (72) hours in advance of each such entry into the District of Columbia. Such State official shall, in addition, provide to the Chief a written statement setting forth the identity of such State official, the purpose of his intended entry into the District of Columbia, and the time and place(s) at which such State official will be present in the District of Columbia for such purpose. Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(b) This section shall not apply to any State law enforcement officer who enters the District of Columbia lawfully in hot pursuit of a person suspected of having committed a crime, or to any State law enforcement officer entering the District of Columbia solely for the purpose of conducting business with either the federal or the District of Columbia government.

(c) Any State official found to be in violation of this section shall be subject to a civil fine of up to three hundred dollars (\$300) for each violation.

(d) Pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), the Chief shall promulgate such regulations as are necessary to carry out the provisions of this chapter. (Sept. 9, 1978, D.C. Law 2-102, § 3, 25 DCR 303.)

Legislative History of Law 2-102. See note to § 4-1101.

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

| Chap. | Sec. |
|--|--------|
| 1. Alley Dwellings | 5-101 |
| 3. Fire Escapes and Safety Provisions | 5-301 |
| 4. Zoning and Height of Buildings | 5-401 |
| 5. Unsafe Structures | 5-501 |
| 6. Insanitary Buildings | 5-601 |
| 7. Housing Redevelopment | 5-701 |
| 8A. Historic Landmark and Historic District Protection | 5-821 |
| 9. Horizontal Property Regimes | 5-901 |
| 12. Condominiums | 5-1201 |
| 13. Cooperative Regulation | 5-1301 |

CHAPTER 1.—ALLEY DWELLINGS

Sec.
5-105. Appropriation of funds — “Conversion of inhabited alley fund” — Power of the Authority to borrow money — Incidental powers.

§ 5-103a. National Capital Housing Authority — Functions and powers of President transferred to Mayor.

NOTES TO DECISIONS

Authority is not suable entity since this section does not explicitly or implicitly establish the Authority as sui juris, in contrast with the provision in § 5-703(b) giving the Redevelopment Land Agency the power to sue and be sued. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

§ 5-105. Appropriation of funds — “Conversion of inhabited alley fund” — Power of the Authority to borrow money — Incidental powers.

* * * * *

(e) In carrying out the provisions of sections 5-103 to 5-116, the Authority is hereby authorized and empowered (1) [Repealed. Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b)], (2) to purchase books of reference, directories, and periodicals that are necessary in connection with its work, and (3) to secure architectural and engineering services on specific projects: Provided, that this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis.

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (xx), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “without regard to the civil service laws” following “projects” in subsection (e)(3).
Legislative History of Law 2-139. See note to § 1-331.1.
Compiler’s note. Act Mar. 3, 1979, D.C. Law 2-139, originally amended subsection (e)(3) by deleting “without

regard to the Classification Act of 1949.” Because this exact language did not appear in subsection (e)(3), the amendment was given effect as indicated in the amendment note.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 3.—FIRE ESCAPES AND SAFETY PROVISIONS

| Sec. | Sec. |
|--|--|
| 5-313. Upon failure of owner to correct condition violative of law, Commissioner may do so — Cost of correction, lien on property — Owner not relieved from criminal responsibility. | 5-328. Smoke detectors — Definitions. 5-329. Same — General requirements. |

Sec.

5-330. Same — Locations.

5-331. Same — Equipment.

5-332. Same — Installation.

Sec.

5-333. Same — Maintenance.

5-334. Same — Permits.

5-335. Same — Other applicable standards.

§ 5-313. Upon failure of owner to correct condition violative of law, Commissioner may do so — Cost of correction, lien on property — Owner not relieved from criminal responsibility.

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the Realty Violations Correction Fund Emergency Act of 1979 (D.C. Act 3-36, May 4, 1979, 25 DCR 9913); sec. 2 of the Second Realty Violations Correction Fund

Emergency Act of 1979 (D.C. Act 3-87, Aug. 14, 1979, 26 DCR 885); and sec. 2 of the Realty Violations Correction Fund Third Emergency Act of 1979 (D.C. Act 3-121, Nov. 9, 1979, 26 DCR 2290).

§ 5-328. Smoke detectors — Definitions.

As used in sections 5-328 to 5-335:

(a) The term “dwelling unit” means a structure, building, area, room, or combination of rooms occupied by persons for sleeping or living.

(b) The term “hospital” means a building or part thereof used for the medical, psychiatric, obstetrical or surgical care, on a twenty-four (24) hour basis, of inpatients.

The term “hospital” includes general hospitals, mental hospitals, tuberculosis hospitals, children’s hospitals, and any such facilities providing inpatient care.

(c) The term “nursing home” means a building or part thereof used for the lodging, boarding and nursing care, on a twenty-four (24) hour basis, of persons who, because of mental or physical incapacity, may be unable to provide for their own needs and safety without the assistance of another person.

The term “nursing home” includes nursing and convalescent homes, skilled nursing facilities, intermediate care facilities, and infirmaries of homes for the aged.

(d) The term “owner” means any person who, alone, or jointly or severally with other persons, has legal title to any premises.

(1) The term “owner” includes any person who has charge, care or control over any premises as (A) an agent, officer, fiduciary, or employee of the owner; (B) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor, or otherwise under a disability; (C) a trustee, elected or appointed, or a person required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or (D) an executor, administrator, receiver, fiduciary, officer appointed by any court, or other similar representative of the owner or his estate.

(2) The term “owner” does not include a lessee, sublessee or other person who merely has the right to occupy or possess a premises.

(e) The term “residential-custodial care facility” means a building, or part thereof, used for the lodging or boarding of persons who are incapable of self-preservation because of age or physical or mental limitation, or who are detained for correctional purposes.

(1) The term “residential-custodial care facility” includes homes for the aged, nurseries (custodial care for children under six (6) years of age), institutions for the mentally retarded (care institutions) and halfway houses, as well as sheltered living facilities and halfway houses operated by the District of Columbia Department of Corrections and District of Columbia Department of Human Resources.

(2) The term “residential-custodial care facility” does not include day care facilities that do not provide lodging or boarding for institutional occupants.

(f) The term “sleeping area” means a bedroom or room intended for sleeping, or a combination of bedrooms or rooms intended for sleeping within a dwelling unit, which are located on the same floor and are not separated by another habitable room, such as a living room, dining room or kitchen but not a bathroom, hallway or closet. A dwelling unit may have more than one sleeping area.

The term “sleeping area” does not include common usage areas in structures with more than one dwelling unit, such as corridors, lobbies and basements.

(g) The term “smoke detector” means a device which detects visible or invisible particles of combustion.

(h) The term “substantially rehabilitated” means any improvement to a structure which is valued greater than one-half ($\frac{1}{2}$) of the assessed valuation of the property including the land. (June 20, 1978, D.C. Law 2-81, § 2, 24 DCR 9050.)

Legislative History of Law 2-81. Law 2-81 was introduced in Council and assigned Bill No. 2-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 21, 1978 and March 7, 1978, respectively. Signed by the Mayor on April 17, 1978, it was assigned Act No. 2-178 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of June 20, 1978, D.C. Law 2-81, 24 DCR 9050, provided: “That this act may be cited as the ‘Smoke Detector Act of 1978.’ ”

Section referred to in section. 5-330.

§ 5-329. Same — General requirements.

The owner of each new or existing dwelling unit, hotel, motel, hospital, nursing home and residential-custodial care facility shall install smoke detectors as required by sections 5-328 to 5-335. The Mayor shall install smoke detectors in each dwelling unit, hospital, nursing home, jail, prison and residential-custodial care facility owned by the District of Columbia.

(a) The owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility which is constructed or substantially rehabilitated under a building permit issued after September 30, 1978, shall install smoke detectors as required by sections 5-328 to 5-335. No certificate of occupancy may be issued for any dwelling unit, hotel, motel, hospital, nursing home or residential-custodial care facility unless smoke detectors have been installed as required by sections 5-328 to 5-335.

(b) The owner of each dwelling unit, hotel, motel and hospital, except as provided in subsections (a) and (c) of this section, shall install smoke detectors as required by sections 5-328 to 5-335 within three (3) years of the effective date of sections 5-328 to 5-335.

(c) The Mayor shall install smoke detectors as required by sections 5-328 to 5-335 in each dwelling unit, hospital, jail and prison owned by the District of Columbia, except as provided in subsection (a) of this section, within two (2) years of the effective date of sections 5-328 to 5-335.

(d) Except as provided in subsection (a) and except as provided in section 14 (d) of Title VII of the Health Care and Community Residence Facilities Regulation, enacted June 14, 1974 (Reg. No. 74-15):

(1) the owner of each residential-custodial care facility and nursing home shall install smoke detectors as required by sections 5-328 to 5-335 by January 1, 1980.

(2) the Mayor shall install smoke detectors as required by sections 5-328 to 5-335 in each residential-custodial care facility and nursing home owned by the District of Columbia by January 1, 1980.

(June 20, 1978, D.C. Law 2-81, § 3, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(a)-(e), 26 DCR 2082.)

Effect of Amendment.

1979 — Act Dec. 21, 1979, D.C. Law 3-42, amended section by adding the second sentence in subsection (a), by substituting “motel and hospital” for “motel, hospital, nursing home and residential-custodial care facility” in subsection (b), by deleting “nursing home” following “hospital” and substituting “and prison” for “prison, and residential-custodial care facility” in subsection (c), and by adding subsection (d).

Legislative History of Law 2-81. See note to § 5-328.

Legislative History of Law 3-42. Law 3-42 was introduced in Council and assigned Bill No. 3-150, which was referred to the Committee on the Judiciary and the Committee on Human Resources. The Bill was adopted on first and second readings on September 25, 1979 and October 9, 1979, respectively. Signed by the Mayor on October 30, 1979, it was assigned Act No. 3-114 and transmitted to both Houses of Congress for its review.

§ 5-330. Same — Locations.

(a) The owner of each dwelling unit shall install at least one (1) smoke detector to protect each sleeping area. In an efficiency, the owner shall install the smoke detector in the room used for sleeping. In all other dwelling units, the owner shall install the smoke detector outside the bedrooms but in the immediate vicinity of the sleeping area.

(b) The owner of each hotel and motel shall install at least one (1) smoke detector to protect each guest room or guest suite. The owner of each dormitory shall install at least one (1) smoke detector to protect each resident room or resident suite. For the purpose of this paragraph, “guest suite” or “resident suite” means a combination of rooms that are always occupied as a single unit. The owner of the hotel, motel or dormitory shall install the smoke detectors as directed by the Mayor of the District of Columbia.

(c) The owner of each hospital, nursing home, jail, prison and residential-custodial care facility shall install smoke detectors as directed by the Mayor of the District of Columbia and as follows:

(1) in each corridor that is adjacent to a room used for sleeping but in no case may the smoke detectors be spaced further apart than thirty (30) feet or more than fifteen (15) feet from any wall; or

(2) in each room used for sleeping.

(d) An owner subject to sections 5-328 to 5-335 shall install each smoke detector on the ceiling at a minimum of six (6) inches from the wall, or on a wall at a minimum of six (6) inches from the ceiling.

(e) An owner subject to sections 5-328 to 5-335 may not install a smoke detector in a dead air space, such as where the ceiling meets the wall. (June 20, 1978, D.C. Law 2-81, § 4, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(f), (g), 26 DCR 2082.)

Effect of Amendment.

1979 — Act Dec. 21, 1979, D.C. Law 3-42, amended section, in subsection (b), by inserting the second sentence, by inserting “or ‘resident suite’ ” in the third sentence and by substituting “motel or dormitory” for “or motel” and “Mayor” for “Fire Chief” in the last sentence, and by substituting “Mayor” for “Fire Chief” in the introductory language of subsection (c).

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 6 of the Emergency Regulation Enforcement Act of 1979 (D.C. Act 3-48, May 30, 1979, 25 DCR 10482); sec. 6 of the Second Emergency Regulation Enforcement Act of 1979 (D.C. Act 3-88, Aug. 14, 1979, 26 DCR 891); and sec. 6 of the Third Emergency Regulation Enforcement Act of 1979 (D.C. Act 3-133, Dec. 3, 1979, 26 DCR 2614).

Legislative History of Law 2-81. See note to § 5-328.

Legislative History of Law 3-42. See note to § 5-329.

§ 5-331. Same — Equipment.

(a) An owner subject to sections 5-328 to 5-335 shall install a smoke detector which is capable of sensing visible or invisible particles of combustion and emitting an audible signal. The owner shall install a smoke detector which is of a type approved by the Mayor of the District of Columbia consistent with any appropriate federal regulations. The owner shall install a smoke detector in accordance with specifications of the manufacturer or in compliance with the National Fire Protection Association Standards 72-E and 74 (1974 Edition).

(b) Within forty (40) days after the effective date of sections 5-328 to 5-335 and before approving any type of smoke detector pursuant to this section, the Mayor of the District of Columbia or his designated agent shall hold a public hearing at which he shall consider, in addition to any other matter he considers relevant, any potential radiological danger presented by any of the types of smoke detectors under consideration. (June 20, 1978, D.C. Law 2-81, § 5, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(g), 26 DCR 2082.)

Effect of Amendment.

1979 — Act Dec. 21, 1979, D.C. Law 3-42, amended section by substituting “Mayor” for “Fire Chief” in the second sentence of subsection (a) and near the middle of subsection (b).

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 6 of the Emergency Regulation Enforcement Act of 1979

(D.C. Act 3-48, May 30, 1979, 25 DCR 10482); sec. 6 of the Second Emergency Regulation Enforcement Act of 1979 (D.C. Act 3-88, Aug. 14, 1979, 26 DCR 891); and sec. 6 of the Third Emergency Regulation Enforcement Act of 1979 (D.C. Act 3-133, Dec. 3, 1979, 26 DCR 2614).

Legislative History of Law 2-81. See note to § 5-328.

Legislative History of Law 3-42. See note to § 5-329.

§ 5-332. Same — Installation.

(a) Except as provided in subsections (b) and (c) of this section, the owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility shall directly wire the smoke detector to the power supply of the building.

(b) In each dwelling unit, hotel, motel, hospital, nursing home, jail, prison and residential-custodial care facility which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a smoke detector which operates from a plug-in outlet fitted with a plug restrainer device if the outlet is not controlled by an on-off switch and if the cord connecting the smoke detector with the outlet is not controlled by an on-off switch.

(c) In each dwelling unit in a structure with only one (1) dwelling unit which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a monitored battery powered smoke detector. (June 20, 1978, D.C. Law 2-81, § 6, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-333. Same — Maintenance.

An owner subject to sections 5-328 to 5-335 shall maintain each smoke detector in a reliable operating condition and shall make periodic inspections and tests to insure that each smoke detector is in proper working condition. (June 20, 1978, D.C. Law 2-81, § 7, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-334. Same — Permits.

No owner may permanently wire a smoke detector to the electrical system of a structure without first obtaining an electrical permit from the Permit Division of the Department of Economic Development. (June 20, 1978, D.C. Law 2-81, § 8, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

§ 5-335. Same — Other applicable standards.

Any person who installs a smoke detector shall comply with the requirements of sections 5-328 to 5-335 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition). In the event of a conflict between sections 5-328 to 5-335 and the National Fire Protection Association Standards 72-E and 74 (1974 Edition), sections 5-328 to 5-335 take precedence. (June 20, 1978, D.C. Law 2-81, § 9, 24 DCR 9050.)

Legislative History of Law 2-81. See note to § 5-328.

CHAPTER 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.

5-426. Appropriations authorized for Zoning Commission
— Compensation of members of Zoning
Commission and Board of Zoning Adjustment.

§ 5-410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

Section referred to in sections. 5-825, 5-827.

§ 5-414. Purposes of zoning regulations.

NOTES TO DECISIONS

Meaning of comprehensive plan referred to in section. — Under this section, the only comprehensive plan with which zoning must be consistent is the plan to be adopted pursuant to § 1-1002 (a), relating to the National Capital Planning Commission. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Although the comprehensive plan for the National Capital has not yet been published, Congress did not intend that until publication a plan prepared by the National Capital Planning Commission in 1968 (when it still retained total authority for land use planning in the District) should control. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Comprehensive plan not existent. — The District of Columbia presently does not have the comprehensive plan anticipated by this section. *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

National Capital plan not prerequisite for zoning activities. — No time limit is set for preparation of the comprehensive plan for the National Capital under § 1-1002, nor is there a moratorium upon zoning activities until the plan is in effect. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Proper standard for zoning until plan adopted. — Since the plan for the National Capital to be adopted

pursuant to § 1-1002 (a) had not yet been published, compliance with the comprehensive plan provision of this section required solely that the Commission zone on a uniform and comprehensive basis. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Illegal "spot zoning". — Until such time as the District of Columbia adopts a comprehensive plan, to constitute illegal "spot zoning" the Board's action "must be inconsistent ... with the character and zoning of the surrounding area." *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 403 A.2d 291).

Requirements for reclassification of particular parcels. — This section does not require the Commission to find evidence that the character of a zoning district has substantially changed since promulgation of the zoning map in order to reclassify a particular parcel within the district. *Rock Creek E. Neighborhood League, Inc. v. District of Columbia Zoning Comm'n* (D.C. 1978, 388 A.2d 450).

Cited in *American Univ. Park Citizens Ass'n v. Burka* (D.C. 1979, 400 A.2d 737); *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

§ 5-415. Existing zoning regulations continued until amended — Public hearing on amendments — Notice — Contents.

NOTES TO DECISIONS

Right to hearing does not confer contested case status. — The statutory right to a hearing afforded by this section does not in and of itself confer "contested case" status on hearings conducted by the Zoning Commission. *Schneider v. District of Columbia Zoning Comm'n* (D.C. 1978, 383 A.2d 324).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and

developers which occurred between the closing of the record and issuance of the Commission's final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

§ 5-417. Public hearings on proposed zoning regulations, maps, and amendments — Notice — Submission to National Capital Planning Commission.

NOTES TO DECISIONS

Public input requirements met. — The requirements under this section and § 1-1505 that interested members of the public have a reasonable opportunity to comment and submit data in support of or in opposition to proposed regulations was met by holding four days of hearings and permitting a substantial period for submission of written comments. *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Ex parte communications proper. — Ex parte communications between the Zoning Commission staff and

developers which occurred between the closing of the record and issuance of the Commission's final orders did not violate due process or the requirements of the Administrative Procedure Act (§ 1-1501 et seq.). *Citizens Ass'n v. Zoning Comm'n* (D.C. 1978, 392 A.2d 1027).

Cited in *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36).

§ 5-420. Board of Zoning Adjustment — Creation, membership — Tenure — Regulations to govern organization and procedure — Appeal — Procedure, powers — Majority vote necessary.

NOTES TO DECISIONS

Subsequent conditions may justify variance. — The phrase in subdivision (3) “or other extraordinary or exceptional situation or condition of a specific property” empowers the Board to provide variance relief from extraordinary or exceptional conditions brought about after the original adoption of a zoning regulation or inhering in the land itself at that time. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

The extraordinary or exceptional condition which is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself, although a subsequent event will not invariably support the grant of a variance, particularly if an affirmative act of the applicant is the direct and sole cause of the hardship complained of. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

Variance properly granted. — Where owners acted in good faith reliance on the implicit findings of zoning office personnel that their irregular lot conformed to lot width requirements though in fact the lot was not in conformance, the Board properly granted a variance since the lot was unusable for any other purpose, the variance would not substantially harm the public and the hardship to the owners was not the result of any affirmative act on their part. *De Azcarate v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 388 A.2d 1233).

Self-created hardship is not considered in an application for an area variance, as that factor only militates against a use variance. *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674).

Burden of showing hardship not met. — Where structure in question, though originally constructed as a flat, was changed in 1950 into a single family dwelling and was utilized as such when the 1958 zoning regulations were adopted, which prohibited flats, and can continue to be used as a single family residence, and is capable of being used in a manner consistent with the zoning regulations, the owners have not met the requisite burden of showing such an extraordinary or exceptional situation or condition that the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owners. *Silverstone v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 396 A.2d 992).

Area variance proper. — Where the evidence showed that due to the irregular shape of a lot the cost to provide required off-street parking would be extraordinary, the owner had satisfied its burden of showing a practical difficulty sufficient to support the grant of an area variance. *Association For Preservation of 1700 Block of N St., N.W., & Vicinity v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 384 A.2d 674).

Regulation consistent with section. — A regulation which by use of the disjunctive “or” sets up separate statutory requisites to the granting of variances is consistent with this section. *Wolf v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 397 A.2d 936).

Cited in *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 403 A.2d 291); *Russell v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 402 A.2d 1231); *Capitol Hill Restoration Soc’y, Inc. v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 398 A.2d 13).

§ 5-422. Building permits — Construction without obtaining — Certificates of occupancy — Use without obtaining — Construction in violation of regulations — Enforcement — Actions, parties — Penalty.

Section referred to in section. 47-3301.

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

§ 5-426. Appropriations authorized for Zoning Commission — Compensation of members of Zoning Commission and Board of Zoning Adjustment.

Appropriations are hereby authorized to carry out the provisions of sections 5-413 to 5-428 for the fiscal year ending June 30, 1938, and thereafter the Mayor of the District of Columbia is authorized and directed to include in his annual estimates such amounts as may be required for salaries and expenses incident to such purposes. Each member of the Zoning Commission and of the Board of Zoning Adjustment shall be entitled to receive compensation. No compensation, however, shall be paid to any such member who is also an officer or employee of the United States or of the District of Columbia government. (June 20, 1938, 52 Stat. 802, ch. 534, § 14; May 13, 1975, D.C. Law 1-1, § 1, 21 DCR 3938; Mar. 3, 1979, D.C. Law 2-139, § 3205(nn), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “according to regulations of the Mayor of the District of Columbia, of \$100 for each day actually spent performing the duties of such a member” at the end of the second sentence.

Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2(l) of the District of Columbia

Government Comprehensive Merit Personnel Act
Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 5.—UNSAFE STRUCTURES

§ 5-504. Nuisances to be abated — Notice given — Cost a lien on property — Penalty — Prosecution.

NOTES TO DECISIONS

Safety obligations of District regarding particular tree. — The obligation of the District of Columbia to assure a reasonable degree of safety on its streets required that it be alert to the presence of and carefully observe at periodic intervals an enormous, multi-trunked

tree that was unusually susceptible to weakening and had a 90-foot overhanging stem weighing ten tons, and the District had to be prepared to abate such hazards as its inspections revealed. *Husovsky v. United States* (1978, 590 F.2d 944, 191 U.S. App. D.C. 242).

CHAPTER 6.—INSANITARY BUILDINGS

Sec.
5-617. Board for the Condemnation of Insanitary Buildings — Condemnation Review Board — Members — Procedure.

§ 5-617. Board for the Condemnation of Insanitary Buildings — Condemnation Review Board — Members — Procedure.

* * * * *

(c) The Commissioner shall designate a number of real property owning residents of the District of Columbia, not employed by the government of the District of Columbia or the Government of the United States, each of whom from time to time shall be designated by the Commissioner to act as a member or an alternate member of the Condemnation Review Board established under the authority of subsection (a) of this section.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (qq), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence of subsection (c).

Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2(l) of the District of Columbia

Government Comprehensive Merit Personnel Act
Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 5-622. Owner’s failure to comply with order — Repair or demolition by Board for the
Condemnation of Insanitary Buildings — Payments of costs — Effect of appeal.

NOTES TO DECISIONS

Cited in *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

CHAPTER 7.—HOUSING REDEVELOPMENT

| Sec. | Sec. | |
|--|---------|--|
| 5-712. Tax exemption. | | Washington Metropolitan Area Transit Authority. |
| 5-713. Administrative expenditure and employment. | | |
| 5-732a. Relocation payments and assistance — Persons displaced by public works programs and projects of District Government and of | 5-732b. | Advisory relocation services for persons displaced by condominium conversions; rehabilitation, demolition or discontinuance. |

§ 5-703. Establishment and powers of the Agency.

NOTES TO DECISIONS

Cited in *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

§ 5-704. Power to acquire and assemble real property — Public utility relocation expenses.

Transfer of U.S. property. Act Sept. 26, 1978, Pub. L. 95-385, 92 Stat. 749, provides for the transfer of certain U.S. property to the District of Columbia Redevelopment Land Agency.

NOTES TO DECISIONS

Government priority over proceeds of condemnation. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

§ 5-705. General and project area redevelopment plans — Shaw Junior High School.

NOTES TO DECISIONS

Use of plan by HUD. — Review of and partial reliance on Redevelopment Land Agency’s urban renewal plan by the federal Department of Housing and Urban Development was not an abdication by HUD of its decision-making duty. *Stanback v. Harris* (1978, 444 F. Supp. 1143).

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

Section referred to in section. 5-712.

§ 5-712. Tax exemption.

Effective July 1, 1979, real property owned by the Agency shall be exempt from taxation: Provided however, that when such property is sold or leased pursuant to section 5-706, it shall be subject to taxation from the date of its conveyance or leasing by the agency. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13; Mar. 3, 1979, D.C. Law 2-148, § 2, 25 DCR 7001.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-148, amended section by rewriting the section.

Legislative History of Law 2-148. Law 2-148 was introduced in Council and assigned Bill No. 2-386, which was referred to the Committee on Housing and Urban

Development. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-327 and transmitted to both Houses of Congress for its review.

§ 5-713. Administrative expenditure and employment.

The Agency is hereby authorized and empowered —

* * * * *

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5-701 to 5-719 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; and

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (yy), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “such appointments and employments to be made in conformance with the civil-service laws and chapter 51 and subchapter III of chapter 53, title 5, U.S. Code [relating to the classification of government employees and related matters]” following “compensations” in subsection (c).

Legislative History of Law 2-139. See note to § 1-331.1. Section referred to in sections. 1-331.1, 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 5-732. Council authorized to make regulations.

New implementing regulations. Pursuant to this section the “Relocation Regulation Payment Increase

Amendment Act of 1978” (D.C. Law 2-122, Oct. 13, 1978, 25 DCR 1547) was enacted.

§ 5-732a. Relocation payments and assistance — Persons displaced by public works programs and projects of District Government and of Washington Metropolitan Area Transit Authority.

(a) Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

(b) Whenever a building in the District of Columbia is converted from rental to condominium or cooperative units, or is substantially rehabilitated or demolished, or is discontinued from housing use, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted, substantially rehabilitated, demolished, or discontinued building. This includes: Ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (Jan. 2, 1971, Pub. L. 91-646, title II, § 209, 84 Stat. 1899; Sept. 28, 1979, D.C. Law 3-19, § 12, 26 DCR 361.)

Effect of Amendment.

1979 — Act Sept. 28, 1979, D.C. Law 3-19, amended section by designating the formerly undesignated

provisions of this section as subsection (a) and by adding subsection (b).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 10 of the Second Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-171, Apr. 3, 1978, 24 DCR 9265); sec. 10 of the Third Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-239, July 17, 1978, 25 DCR 1480); and sec. 10 of the Fourth Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-290, Oct. 25, 1978, 25 DCR 4332).

1979 — For temporary amendment of section, see sec. 11 of the First Emergency Cooperative Regulation Act of

1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680); sec. 11 of the Second Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-37, May 4, 1979, 25 DCR 9918); and sec. 11 of the Third Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-79, Aug. 3, 1979, 26 DCR 642).

Legislative History of Law 3-19. See note to § 5-1301.

Section referred to in section. 5-1310.

§ 5-732b. Advisory relocation services for persons displaced by condominium conversions, rehabilitation, demolition or discontinuance.

Whenever a building in the District of Columbia is converted from rental to condominium units, or is substantially rehabilitated or demolished, or is discontinued from housing use, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted, substantially rehabilitated, demolished, or discontinued building. This includes: Ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning Federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (Mar. 29, 1977, D.C. Law 1-89, title V, § 516, 23 DCR 9532b; Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendments.

1978 — Act Mar. 16, 1978, D.C. Law 2-54, amended section by adding the words “or is substantially rehabilitated or demolished,” immediately after the phrase “converted from rental to condominium units,” in the first sentence and by inserting the phrase, “substantially rehabilitated or demolished” between the words “converted” and “building” at the end of such sentence. Act Oct. 13, 1978, D.C. Law 2-121, amended section by adding “or is discontinued from housing use,” in the first sentence and by deleting “or demolished,” and inserting “, demolished or discontinued,” in the first sentence.

Emergency Act Amendments.

1978 — For temporary repeal of section, see sec. 10 of the Second Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-171, Apr. 3, 1978, 24 DCR 9265); sec. 10

of the Third Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-239, July 17, 1978, 25 DCR 1480); and sec. 10 of the Fourth Emergency Cooperative Regulation Act of 1978 (D.C. Act 2-290, Oct. 25, 1978, 25 DCR 4332).

1979 — For temporary amendment of section, see sec. 11 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680); sec. 11 of the Second Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-37, May 4, 1979, 25 DCR 9918); and sec. 11 of the Third Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-79, Aug. 3, 1979, 26 DCR 642).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

CHAPTER 8A.—HISTORIC LANDMARK AND HISTORIC DISTRICT PROTECTION

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| 5-821. Purposes. | 5-829. Regulations. |
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§ 5-821. Purposes.

(a) It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural and aesthetic merit are in the interests of the health, prosperity and welfare of the people of the District of Columbia. Therefore, this chapter is intended to:

(1) effect and accomplish the protection, enhancement and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the city’s cultural, social, economic, political and architectural history;

- (2) safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;
- (3) foster civic pride in the accomplishments of the past;
- (4) protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and
- (5) promote the use of landmarks and historic districts for the education, pleasure and welfare of the people of the District of Columbia.

(b) It is further declared that the purposes of this chapter are:

- (1) with respect to properties in historic districts:
 - (A) to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
 - (B) to assure that alterations of existing structures are compatible with the character of the historic district; and
 - (C) to assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district;
- (2) with respect to historic landmarks:
 - (A) to retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and
 - (B) to encourage the restoration of historic landmarks.

(Mar. 3, 1979, D.C. Law 2-144, § 2, 25 DCR 6939.)

Legislative History of Law 2-144. Law 2-144 was introduced in Council and assigned Bill No. 2-367, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on October 31, 1978, November 14, 1978 and November 28, 1978, respectively. Signed by the Mayor on December 27, 1978, it was assigned Act No. 2-318 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-144, provided: "That this act may be cited as the 'Historic Landmark and Historic District Protection Act of 1978.' "

Section referred to in sections. 5-822, 5-823.

§ 5-822. Definitions.

For the purposes of this chapter the term:

- (a) "alter" or "alteration" means a change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required: Except, that "alter" or "alteration" also means a change in any interior space which has been specifically designated as an historic landmark.
- (b) "Commission of Fine Arts" means the United States Commission of Fine Arts established pursuant to the Act of May 17, 1910 (40 U.S.C. § 104).
- (c) "demolish" or "demolition" means the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any facade of a building or structure.
- (d) "design" means exterior architectural features including height, appearance, texture, color and nature of materials.
- (e) "historic district" means an historic district (1) listed in the National Register of Historic Places as of the effective date of this chapter; (2) nominated to the National Register by the State Historic Preservation Officer for the District of Columbia; or (3) which the State Historic Preservation Officer for the District of Columbia has issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.
- (f) "historic landmark" means a building, structure, object or feature, and its site, or a site (1) listed in the National Register of Historic Places as of the effective date of this chapter; or (2) listed in the District of Columbia's inventory of historic sites, or for which application for such listing is pending with the Historic Preservation Review Board: Provided, that the Review Board

will determine within ninety (90) days of receipt of an application pursuant to section 5-824, 5-825, 5-826, 5-827 or 5-828 whether to list such property, and any property not so listed will not be considered an historic landmark within the terms of this chapter.

(g) “Historic Preservation Review Board” or “Review Board” means the board designated pursuant to section 5-823 and pursuant to regulations promulgated by the United States Secretary of the Interior under the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(h) “Mayor” means the Mayor of the District of Columbia, or his designated agent.

(i) “National Register of Historic Places” or “National Register” means that national record of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology and culture established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470a).

(j) “necessary in the public interest” means consistent with the purposes of this chapter as set forth in section 5-821(b) or necessary to allow the construction of a project of special merit.

(k) “special merit” means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.

(l) “State Historic Preservation Officer” means the person designated by the Mayor to administer the National Register Program within the District of Columbia established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(m) “subdivide” or “subdivision” means division of a lot into two (2) or more lots of record.

(n) “unreasonable economic hardship” means that failure to issue a permit would amount to a taking of the owner’s property without just compensation or, in the case of a low-income owner(s) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such owner(s).

(Mar. 3, 1979, D.C. Law 2-144, § 3, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-823. Historic Preservation Review Board.

(a) The Mayor is authorized to establish an Historic Preservation Review Board whose members shall be confirmed by the Council of the District of Columbia. The Review Board shall be constituted and its members qualified so as to meet the requirements of a State Review Board under regulations issued by the Secretary of the Interior pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.). Any body which functions as the District of Columbia State Review Board pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.) as of the effective date of this chapter, shall function as the Review Board pursuant to this section until a Review Board is established and its members nominated by the Mayor and confirmed by the Council of the District of Columbia pursuant to this section.

(b) Subject to the requirements of subsection (a) of this section, all appointments to the Historic Preservation Review Board shall be made with a view toward having its membership represent to the greatest practicable extent the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics.

(c) The Review Board shall:

(1) advise the Mayor on the compatibility with the purposes of this chapter (as set forth in section 5-821) of the applications referred to it by the Mayor pursuant to sections 5-824 through 5-828;

(2) perform the functions and duties of a State Review Board as set forth in regulations issued pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.);

(3) designate and maintain a current inventory of historic landmarks and historic districts in the District of Columbia and, in connection therewith, adopt and publish appropriate procedures; and

(4) perform such other functions and duties relating to the protection, preservation, enhancement and perpetuation of the historic, architectural, cultural and aesthetic heritage of the District of Columbia as the Mayor may from time to time assign.

(Mar. 3, 1979, D.C. Law 2-144, § 4, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in section. 5-822.

§ 5-824. Demolitions.

(a) Before the Mayor may issue a permit to demolish an historic landmark or a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (e) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, sec. 5-801 et seq.). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within one hundred and twenty (120) days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section: Provided, that the Mayor may make such finding without a public hearing in the case of a building or structure in an historic district or on the site of an historic landmark if the Review Board has advised in its recommendation that the building or structure does not contribute to the historic district or the historic landmark.

(d) If the Review Board recommends against granting the permit, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application.

(g) (1) In any instance where there is a claim of unreasonable economic hardship, the owner shall submit, by affidavit, to the Mayor at least twenty (20) days prior to the public hearing, at least the following information:

(A) for all property:

(i) the amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;

(ii) the assessed value of the land and improvements thereon according to the two (2) most recent assessments;

(iii) real estate taxes for the previous two (2) years;

(iv) annual debt service, if any, for the previous two (2) years;

(v) all appraisals obtained within the previous two (2) years by the owner or applicant in connection with his purchase, financing or ownership of the property;

(vi) any listing of the property for sale or rent, price asked and offers received, if any; and

(vii) any consideration by the owner as to profitable adaptive uses for the property; and

(B) for income-producing property:

(i) annual gross income from the property for the previous two (2) years;

(ii) itemized operating and maintenance expenses for the previous two (2) years;

(iii) annual cash flow, if any, for the previous two (2) years.

(2) The Mayor may require that an applicant furnish such additional information as the Mayor believes is relevant to his determination of unreasonable economic hardship and may provide in appropriate instances that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(h) In those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit for new construction is issued simultaneously under section 5-827 and the owner demonstrates the ability to complete the project. (Mar. 3, 1979, D.C. Law 2-144, § 5, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in sections. 5-822, 5-825, 5-826, 5-828, 5-830.

§ 5-825. Alterations.

(a) Before the Mayor may issue a permit to alter the exterior or site of an historic landmark or of a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (e) of this section, the Mayor may refer the permit application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, sec. 5-801 et seq.) or the Shipstead-Luce Act (D.C. Code, sec. 5-410). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within one hundred and twenty (120) days after the Review Board receives the referral pursuant to subsection (b), the Mayor shall make the finding required by subsection (f).

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) In cases in which a claim of unreasonable economic hardship or special merit is made and in any other case he deems appropriate or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner.

(g) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any instance where there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of section 5-824. (Mar. 3, 1979, D.C. Law 2-144, § 6, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in sections. 5-822, 5-828, 5-830.

§ 5-826. Subdivisions.

(a) Before the Mayor may admit to record any subdivision of an historic landmark or of a property in an historic district, the Mayor shall review the application for admission to record in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the application for admission to record required by subsection (e) of this section, the Mayor shall refer the application to the Historic Preservation Review Board for its recommendation.

(c) Within one hundred and twenty (120) days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section: Provided, that the Mayor may make such finding without a public hearing in the case of a subdivision of a lot in an historic district if the Review Board advises him that such subdivision is consistent with the purposes of this chapter.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No subdivision subject to this chapter shall be admitted to record unless the Mayor finds that admission to record is necessary in the public interest or that a failure to do so will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any case in which there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of section 5-824.

(g) In those cases in which the Mayor finds that the subdivision is necessary to allow the construction of a project of special merit, no subdivision permit shall be issued unless a permit for new construction is issued simultaneously under section 5-827 and the owner demonstrates the ability to complete the project. (Mar. 3, 1979, D.C. Law 2-144, § 7, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in sections. 5-822, 5-828.

§ 5-827. New construction.

(a) Before the Mayor may issue a permit to construct a building or structure in an historic district or on the site of an historic landmark, the Mayor shall review the permit application in accordance with this section and shall place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the permit application required by subsection (f) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (D.C. Code, sec. 5-801 et seq.) or the Shipstead-Luce Act (D.C. Code, sec. 5-410). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within one hundred and twenty (120) days after the Review Board receives the referral, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) In any case where the Mayor deems appropriate, or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible: Provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark. (Mar. 3, 1979, D.C. 2-144, § 8, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in sections. 5-822, 5-824, 5-826, 5-828, 5-830.

§ 5-828. Application for preliminary review.

An applicant may apply to the Mayor for a preliminary review of a project for compliance with the provisions of this chapter relating to new construction, and to any demolition, alteration or subdivision necessary for such new construction. Upon the provision of such information and upon compliance with such other conditions as the Mayor may require, such application shall be considered by the Mayor without the necessity of the applicant completing other permit requirements not necessary for a finding under this chapter. Where an application for a preliminary review is received pursuant to this section, the Mayor will determine, in accordance with the procedures and requirements specified in sections 5-824, 5-825, 5-826 and/or 5-827, as applicable, whether to issue a preliminary finding of compliance with this chapter: Provided, that no permit shall be granted except in accordance with all other permit requirements, and after final review by the Mayor under this chapter: Provided further, that where the final review shows that the project is not consistent with the preliminary review, the application will again be processed in accordance with the procedures and requirements of sections 5-824, 5-825, 5-826 and/or 5-827, as applicable. (Mar. 3, 1979, D.C. Law 2-144, § 9, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

Section referred to in section. 5-822.

§ 5-829. Regulations.

The Mayor is authorized to issue such regulations as may be necessary or appropriate to carry out his duties under this chapter. Such regulations shall be issued to take effect within sixty (60) days from the effective date of this chapter. (Mar. 3, 1979, D.C. Law 2-144, § 10, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-830. Penalties and remedies.

(a) *Criminal penalty.* — Any person who willfully violates any provision of this chapter or of any regulation issued under the authority of this chapter shall, upon conviction, be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than ninety (90) days, or both. All prosecutions for violations of this chapter or of any regulations issued under the authority of this chapter shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants.

(b) *Civil remedy.* — Any person who demolishes, alters or constructs a building or structure in violation of section 5-824, 5-825 or 5-827 shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the Corporation Counsel. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty. (Mar. 3, 1979, D.C. Law 2-144, § 11, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-831. Insanitary and unsafe buildings.

(a) Nothing in this chapter shall interfere with the authority of the Board of Condemnation to put a building or structure into sanitary condition or to demolish it pursuant to the provisions of the Act of May 1, 1906 (D.C. Code, secs. 5-616 through 5-634): Except, that no permit for the demolition of an historic landmark or building or structure in an historic district shall be issued to the owner except in accordance with the provisions of this chapter.

(b) Nothing in this chapter shall affect the authority of the District of Columbia to secure or remove an unsafe building or structure pursuant to the Act of March 1, 1899 (D.C. Code, secs. 5-501 through 5-503). (Mar. 3, 1979, D.C. Law 2-144, § 12, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-832. Administrative procedures.

(a) In any case of demolition, alteration or new construction in which a hearing was held, the Mayor's decision on such application shall not become final until fifteen (15) days after issuance.

(b) All proceedings pursuant to this chapter shall be conducted in accordance with the applicable provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). Any final order of the Mayor under this chapter shall be reviewable in the District of Columbia Court of Appeals. (Mar. 3, 1979, D.C. Law 2-144, § 13, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-833. Report.

At the end of each twelve (12) month period following the effective date of this chapter, the Mayor shall transmit to the Council a detailed report on the implementation of this chapter including, but not limited to:

- (a) the number of applications for alterations in historic districts;
- (b) the number of such applications granted without hearing as pertaining to buildings in historic districts that do not contribute to the historic district;
- (c) the number of such applications granted after hearing as in the public interest;
- (d) the number of applications granted after hearing on the basis of economic hardship;
- (e) the number of such applications which are denied. For each denial the report should specify:
 - (1) the nature of the requested alteration;
 - (2) why it was found to not be in the public interest; and
 - (3) whether economic hardship was claimed and if so, why it was found not to exist.

(Mar. 3, 1979, D.C. Law 2-144, § 14, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-834. Severability.

The sections of this chapter are hereby declared to be severable. In the event that any section of this chapter or portion thereof is held void or unenforceable for whatever reason, all remaining provisions shall remain in full force and effect. (Mar. 3, 1979, D.C. Law 2-144, § 16, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

§ 5-835. Effective date.

This chapter shall become effective as provided for acts of the Council of the District of Columbia in section 1-147(c)(1). Notwithstanding any other provision of law, upon the effective date of this chapter, all pending applications for permits shall be subject to this chapter and no outstanding permits shall be renewed or reissued except in accordance with the provisions of this chapter. (Mar. 3, 1979, D.C. Law 2-144, § 17, 25 DCR 6939.)

Legislative History of Law 2-144. See note to § 5-821.

CHAPTER 9.—HORIZONTAL PROPERTY REGIMES

§ 5-903. Horizontal property regimes.

Section referred to in sections. 47-622.1, 47-632.1.

CHAPTER 12.—CONDOMINIUMS

Subchapter I. — General Provisions

Sec.
5-1202. Definitions.

Subchapter V.—Condominium
Conversion—Housing Assistance
Part A.—Condominium Conversion

5-1281. Limitations on condominium conversions.

Subchapter I.—General Provisions

§ 5-1201. Applicability.

Section referred to in section. 45-1698.

§ 5-1202. Definitions.

For the purposes of this chapter:

* * * * *

(v) “Offer” shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt; provided, however, that “offer” shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium.

* * * * *

(As amended Sept. 22, 1978, D.C. Law 2-110, § 2, 25 DCR 1461.)

Effect of Amendment.
1978 — Act Sept. 22, 1978, D.C. Law 2-110, amended section by striking out “if such advertisement states that it does not constitute an offer of sale and that an offer may be made only in compliance with the condominium act of the state or territory in which the condominium is located” in subsection (v).
Legislative History of Law 2-110. Law 2-110 was introduced in Council and assigned Bill No. 2-200, which

was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-231 and transmitted to both Houses of Congress for its review.
Section referred to in sections. 47-622, 47-1001a.

*Subchapter V.—Condominium
Conversion—Housing Assistance*

PART A.—CONDOMINIUM CONVERSION

§ 5-1281. Limitations on condominium conversions.

* * * * *

(b) (1) A housing accommodation or rental unit in the District of Columbia may be converted into a condominium —

* * * * *

(B) except as provided in paragraph (2), if that housing accommodation is not a high rent housing accommodation or if that rental unit is located in a housing accommodation which is not a high rent housing accommodation, at any time after March 29, 1977, at which the most recently computed vacancy rate (computed according to the procedure set forth upon the enactment of the Condominium Act of 1976, D.C. Law 1-89, by the Council July 20, 1976 effective at the end of the thirty day period, provided for Congressional review of acts of the Council under section 1-147(c)) higher than 3 percent.

For the purposes of this subchapter, the term "high rent housing accommodation" includes any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:

(i) multiply the number of rental units in the following categories by the corresponding rents established by the United States Department of Housing and Urban Development for the District of Columbia as the current fair market rents for existing housing under Section 8 Housing Assistance Payments Program for Elevator or Non-Elevator (as appropriate) Buildings: (I) efficiency rental units; (II) one bedroom rental units; (III) two bedroom rental units; (IV) three bedroom rental units; (V) four or more bedroom rental units; so that the rates are not lower than \$267 for one bedroom, \$314 for two bedroom, \$408 for three or more bedroom and \$221 for efficiency rental units; and

(ii) total the results obtained in clause (i) above; and

(iii) increase the result obtained in clause (ii) by the maximum percentage of any upward rent adjustments found to be warranted by the District of Columbia Rental Accommodations Commission pursuant to section 45-1687(b), beginning with the 1978 Annual Report.

* * * * *

(c) At the time an application is made to the Mayor for a determination of eligibility to convert a housing accommodation or rental unit to a condominium in the District of Columbia, the applicant must certify to the Mayor that he has given written notice to the tenants of the affected housing accommodation or rental unit of the filing of the application. The notice shall include the provisions of this section pursuant to which the application is filed.

After filing of an application for determination of eligibility to convert a rental unit or housing accommodation to a condominium, the Mayor shall afford affected tenants an opportunity to be heard in a manner pursuant to regulations promulgated by the Mayor.

(As amended Mar. 16, 1978, D.C. Law 2-54, § 605, 24 DCR 5334; Mar. 3, 1979, D.C. Law 2-125, § 3, 25 DCR 2230; Sept. 28, 1979, D.C. Law 3-18, § 3, 26 DCR 358; Oct. 20, 1979, D.C. Law 3-35, § 2, 26 DCR 1121.)

Effect of Amendments.

1978 — Act Mar. 16, 1978, D.C. Law 2-54, amended section by changing the amounts in clause (i) of subsection (b) (1) (B) from \$212.50 to \$228.50, \$267 to \$287, \$375 to \$403 and \$162.50 to \$174.

1979 — Act Mar. 3, 1979, D.C. Law 2-125, amended section by rewriting clause (i) of subsection (b) (1) (B). Act Sept. 28, 1979, D.C. Law 3-18, amended section by adding subsection (c). Act Oct. 20, 1979, D.C. Law 3-35, amended section, in subsection (b) (1) (B), by substituting "clause (i) above; and" for "phrase (i)" in clause (ii) and by adding clause (iii).

Emergency Act Amendments.

1978 — For temporary amendment of subsection (b), see sec. 3 of the Condominium Conversion Emergency Act of 1978 (D.C. Act 2-159, Mar. 10, 1978, 24 DCR 8077); sec. 3 of the Second Condominium Conversion Emergency Act of 1978 (D.C. Act 2-204, June 9, 1978, 25 DCR 1273); sec. 3 of the Third Condominium Conversion Emergency Act of 1978 (D.C. Act 2-272, Aug. 21, 1978, 25 DCR 2542); and sec.

3 of the Fourth Condominium Conversion Emergency Act of 1978 (D.C. Act 2-309, Nov. 30, 1978, 25 DCR 5536).

1979 — For temporary amendment of section, see sec. 3 of the First Condominium Conversion Emergency Act of 1979 (D.C. Act 3-10, Feb. 23, 1979, 25 DCR 8154); and sec. 2 of the Emergency Condominium-Cooperative Conversion Rent Level Amendment Act of 1979 (D.C. Act 3-47, May 29, 1979, 25 DCR 10477). For temporary stabilization of the conversion of rental housing to condominium and cooperative housing in the District of Columbia, see secs. 2, 3 and 4 of the Emergency Condominium and Cooperative Conversion Stabilization Act of 1979 (D.C. Act 3-95, Aug. 27, 1979, 26 DCR 1014); and secs. 2, 3 and 4 of the Condominium and Cooperative Conversion Stabilization Emergency Act of 1979 (D.C. Act 3-132, Nov. 23, 1979, 26 DCR 2436).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-125. Law 2-125 was introduced in Council and assigned Bill No. 2-257, which was referred to the Committee on Housing and Urban

Development. The Bill was adopted on first and second readings on June 27, 1978 and July 25, 1978, respectively. Signed by the Mayor on August 16, 1978, it was assigned Act No. 2-260 and transmitted to both Houses of Congress for its review.

Legislative History of Law 3-18. See note to § 45-1699.9.

Legislative History of Law 3-35. Law 3-35 was introduced in Council and assigned Bill No. 3-139, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed by the Mayor on August 31, 1979, it was assigned Act No. 3-101 and transmitted to both Houses of Congress for its review.

Statement of findings and purposes. Section 2 of Act Mar. 3, 1979, D.C. Law 2-125, provided: "The term 'high

rent housing accommodation', as defined in Title V of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89), requires redefinition because the rent levels established for the four (4) housing categories in said law do not reflect present rent levels in the District of Columbia.

It is the intent of the Council of the District of Columbia to redefine the term 'high rent housing accommodation' which in no instance shall be lower than the fair market rent levels set for elevator or non-elevator (as appropriate) apartments in the Washington Metropolitan Area by the Section 8 Housing Assistance Program established by the 'Housing and Community Development Act of 1974' (P.L. 93-383; 88 Stat. 721)."

§ 5-1296. Definitions.

Section referred to in sections. 45-1698, 45-1699.22.

CHAPTER 13.—COOPERATIVE REGULATION

- Sec.
- 5-1301. Definitions.

5-1302. Incorporation of association not permitted — Cooperative incorporated in another jurisdiction — Powers of association — Acquisition of housing accommodation for resale or rental purposes.

5-1303. Exemption from chapter.

5-1304. Notice of termination of tenancy.

5-1305. Eligibility for housing assistance and relocation compensation.

- Sec.
- 5-1306. Calculation of housing assistance payment.

5-1307. Calculation of relocation compensation.

5-1308. Application for housing assistance and relocation compensation.

5-1309. Payments of housing assistance.

5-1310. Relocation advisory services.

5-1311. Promulgation of regulations.

§ 5-1301. Definitions.

For the purposes of this chapter, unless the subject matter requires otherwise:

(a) The term "association" means a group enterprise legally incorporated under the District of Columbia Cooperative Association Act (D.C. Code, sec. 29-801 et seq.), or a cooperative corporation incorporated pursuant to the laws of another jurisdiction.

(b) The term "comparable rental units" means rental units of corresponding facilities with the same or similar benefits or services included in the price of the rent.

(c) The term "declarant" shall mean a person(s), association(s), or group(s) who, under section 5-1303, has applied for and has been granted permission to convert a housing accommodation to cooperative ownership.

(d) The term "eligible recipient" means the head of household in which the household has a combined annual income totaling less than the following percentage of the median annual family income (for a household of four (4) persons) for the District of Columbia, as such median is determined by the United States Bureau of Census and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes collected under contract by local or regional government agencies:

| | |
|---|------------|
| one-person household | 50 percent |
| two-person household | 60 percent |
| three-person household or a one- or two-person household containing any person who is 60 years of age or older or who | |

| | |
|--|-------------|
| is handicapped as defined by the Mayor | 90 percent |
| four-person household | 100 percent |
| five-person household | 110 percent |
| more than five-person household | 120 percent |

- (e) The term “family” means a group of persons related by blood or marriage.
- (f) The term “head of household” means an individual who maintains the affected rental unit as his principal place of abode, is a bona fide resident and domiciliary of the District of Columbia, and contributes more than one-half (½) the cost of maintaining such rental unit. An individual may be considered a head of household for the purposes of this chapter without regard as to whether such individual would qualify as a head of household for the purposes of any other law.
- (g) The term “high rent housing accommodation” means any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:
- (1) multiply the number of rental units in the following categories by the corresponding rents established by the United States Department of Housing and Urban Development for the District of Columbia as the current fair market rents for existing housing under Section 8 Housing Assistance Payments Program for Elevator or Non-Elevator (as appropriate) Buildings: (i) efficiency rental units; (ii) one bedroom rental units; (iii) two bedroom rental units; (iv) three bedroom rental units; (v) four or more bedroom rental units; so that the rates are not lower than \$267 for one bedroom, \$314 for two bedroom, \$408 for three or more bedroom, and \$221 for efficiency rental units;
 - (2) total the results obtained in paragraph (1); and
 - (3) increase the result obtained in paragraph (2) by the maximum percentage of any upward rent adjustments found to be warranted by the District of Columbia Rental Accommodations Commission pursuant to section 45-1687(b).
- (h) The term “housing accommodation” means any structure or building in the District of Columbia containing one (1) or more rental units, and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy, and in which at least sixty (60) percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy; any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including but not limited to hospitals, convalescent homes, nursing homes, and personal care homes; or any dormitory of an institute of higher education, or a private boarding school, in which rooms are provided for students.
- (i) The term “housing expense” means the amount of rent attributable to a rental unit plus the cost of gas, electricity, water, and sewer services if not included in the rent and if paid by the occupant of such rental unit, but shall exclude any security deposit.
- (j) The term “suitable size” means for a one (1) person family, an efficiency rental unit; for a two (2) person family, a one (1) bedroom rental unit; for a family of three (3) or four (4) persons, a two (2) bedroom rental unit; for a family of five (5) or six (6) persons, a three (3) bedroom rental unit; and for a family of seven (7) or more persons, a four (4) bedroom rental unit: Except, that adjustments shall be made to allow children and unmarried adults, of the opposite sex, to have separate sleeping rooms. In determining suitable size for a comparable rental unit, one (1) person living in a one (1) bedroom rental unit before relocation as a result of a cooperative conversion shall be eligible for assistance at the level of a one (1) bedroom comparable rental unit.
- (k) The term “total monthly rent” shall include the rents asked for vacant units.
- (Sept. 28, 1979, D.C. Law 3-19, § 2, 26 DCR 361.)

Emergency Act Amendment.
1979 — For temporary addition of section, see sec. 2 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. Law 3-19 was introduced in Council and assigned Bill No. 3-10, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second

readings on May 22, 1979 and June 5, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-63 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Sept. 28, 1979, D.C. Law 3-19, provided: "That this act may be cited as the 'Cooperative Regulation Act of 1979.' "

§ 5-1302. Incorporation of association not permitted — Cooperative incorporated in another jurisdiction — Powers of association — Acquisition of housing accommodation for resale or rental purposes.

(a) Notwithstanding any provision of the District of Columbia Cooperative Association Act (D.C. Code, sec. 29-801 et seq.), or any other provisions of law permitting the formation of associations, no association shall be incorporated in the District of Columbia, nor shall a cooperative corporation incorporated pursuant to the laws of another jurisdiction be permitted to acquire, manage, or operate any housing accommodation in the District of Columbia. No association which is already incorporated or operating in the District of Columbia shall acquire, manage, or operate any housing accommodation which was not owned, managed, or operated by it on September 1, 1975.

(b) Nothing in this chapter shall be construed to prohibit any association from acquiring a housing accommodation for resale, where such resale is to persons other than members of the association, or from acquiring, managing, or operating any housing accommodation for rental purposes. (Sept. 28, 1979, D.C. Law 3-19, § 3, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 2 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

§ 5-1303. Exemption from chapter.

(a) The Mayor may grant an exemption to the provisions of this chapter in any case where he finds that:

(1) less than fifty (50) percent of the units in the housing accommodation being converted to a cooperative are occupied;

(2) fifty (50) percent or more of such units are occupied, a majority of the heads of households of such units have agreed in writing to the conversion of such housing accommodation to a cooperative; or

(3) the housing accommodation is a high rent housing accommodation at any time after the effective date of this chapter.

(b) The exemptions provided for in this section shall be granted only upon application and shall not be granted in less than ten (10) days after such application is made. The Mayor shall notify the affected tenants in writing that such an application has been filed, and shall afford them the opportunity to be heard as to the validity of the facts presented in the application. (Sept. 28, 1979, D.C. Law 3-19, § 4, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 3 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301. Section referred to in sections. 5-1301, 5-1304.

§ 5-1304. Notice of termination of tenancy.

No notice given to any person which purports to terminate a tenancy so that a rental unit may be converted to a cooperative shall be valid unless it relates to a housing accommodation for which an exemption has been granted under section 5-1303 or under the provisions of the following emergency acts: section 3 of Act 2-13; section 3 of Act 2-47; section 3 of Act 2-171; section 3 of Act 2-239; section 3 of Act 2-290; section 3 of Act 3-2; and section 3 of Act 3-37. (Sept. 28, 1979, D.C. Law 3-19, § 5, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 4 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

§ 5-1305. Eligibility for housing assistance and relocation compensation.

(a) In addition to all other requirements of this chapter, and to all other applicable provisions of law, each declarant of a conversion cooperative shall pay housing assistance, in an amount calculated according to section 5-1306, to any eligible recipient who:

- (1) makes application for such assistance;
- (2) has been living, for at least one (1) year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he is being displaced;
- (3) is displaced from a rental unit because such rental unit is being converted to a cooperative by the declarant; and
- (4) relocates in the District of Columbia.

Such housing assistance shall be paid in one (1) lump sum payment, within thirty (30) days after the date the declarant receives notification pursuant to section 5-1308(c), to the eligible recipient or the Mayor, as appropriate. Beginning with the twenty-fifth (25th) month occurring immediately after the month in which such eligible recipient relocated, and for the immediate succeeding thirty-five (35) months thereafter, housing assistance payments to such recipient shall be made by the Mayor of the District of Columbia if, as of the first day of the twenty-fifth (25th) month occurring after his relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which he is entitled to receive under this chapter.

(b) In addition to all other requirements of this chapter, and to all other applicable provisions of law, each declarant shall pay relocation compensation to an eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the occupant received the one hundred and twenty (120) day notice of declarant's intention to convert as required by section 45-1699.10. Such relocation compensation shall be calculated according to the provisions of section 5-1307.

(c) No part of any housing assistance payment or any relocation compensation made under this chapter shall be considered income to the eligible recipient for the purposes of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Code, sec. 47-1551 et seq.). Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment. (Sept. 28, 1979, D.C. Law 3-19, § 6, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 5 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.
Section referred to in section. 5-1308.

§ 5-1306. Calculation of housing assistance payment.

(a) The amount of each housing assistance payment to be made under this chapter shall be calculated as follows:

- (1) If the amount of an eligible recipient's average monthly housing expense, during the twelve (12) consecutive month period ending with the month preceding the month during which he relocated as a result of his rental unit being converted to a cooperative, is an amount which is less than twenty-five (25) percent of the average net monthly family income computed for such period, then the amount of the monthly housing assistance payment to such eligible recipient shall be in an amount equal to the difference between an amount equal to twenty-five (25) percent of such average net monthly family income and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(2) If the amount of an eligible recipient's average monthly housing expense, during such period, is an amount which is more than twenty-five (25) percent of such average net monthly family income, then the amount of the monthly housing assistance payment shall be in an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(3) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either paragraph (1) or (2) of this subsection, as appropriate, by twenty-four (24). To obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by thirty-six (36).

(b) The Mayor shall determine, from time to time and at least once every twelve (12) months, the range of rents being charged in the District of Columbia by landlords of privately owned housing accommodations for available one (1) bedroom, two (2) bedroom, three (3) bedroom or more, and efficiency rental units. The Mayor shall publish his preliminary range of rents in the District of Columbia Register and, within thirty (30) days after publication, shall hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used by him for the purposes of this chapter. The figure obtained under either paragraph (1) or (2) of subsection (a), as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time the housing assistance payment is made to such eligible recipient, and the amount of the eligible recipient's average monthly housing expense for the twelve (12) month period referred to in paragraph (1) of subsection (a). (Sept. 28, 1979, D.C. Law 3-19, § 7, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 6 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

Section referred to in section. 5-1305.

§ 5-1307. Calculation of relocation compensation.

(a) The amount of relocation compensation payable shall be calculated as follows:

(1) Relocation compensation in the amount of one hundred and twenty-five dollars (\$125.00) for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit or if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purpose of the preceding sentence, a "room" in an apartment unit shall mean any space sixty (60) square feet or larger which has a fixed ceiling and floor and is subdivided with fixed partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(2) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington Metropolitan Area. Such adjustments shall be made no more than once in any calendar year and shall be made only after prior notice and hearing.

(b) After notification of the Mayor's determination pursuant to section 5-1308(b), the declarant shall pay relocation compensation as follows:

(1) if the declarant has received at least ten (10) days advance written notice of the date upon which the apartment unit is to be vacated, the payment shall be paid no later than twenty-four (24) hours prior to the date the apartment unit is to be vacated; or

(2) if no such notice has been received, then payment shall be made within thirty (30) days after the apartment unit is vacated.

(c) If there is more than one (1) person entitled to relocation compensation with respect to an apartment unit, each such person shall be entitled to share equally in the amount of relocation compensation.

(d) In any case in which there is a question as to whether relocation compensation shall be paid for an apartment unit, or to whom, or the proper amount of such compensation, the declarant shall pay to the Mayor the amount indicated in the notice issued pursuant to section 5-1308(b) for such apartment unit and shall thereby be relieved of any further obligation under this section with respect to such apartment unit. The Mayor shall hold such payment and shall determine, after investigation, whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons, if any, entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(e) Payment of relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to the declarant by the court rendering the judgment for possession. (Sept. 28, 1979, D.C. Law 3-19, § 8, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 7 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

Section referred to in sections. 5-1305, 5-1308.

§ 5-1308. Application for housing assistance and relocation compensation.

(a) Each declarant, at the same time he sends tenants the one hundred and twenty (120) day notice required under section 45-1699.10, shall send to each tenant the application forms (with instructions), provided by the Mayor, for making application for housing assistance and relocation compensation payable under the provisions of this chapter. Each applicant for such housing assistance or relocation compensation shall give to the Mayor reasonable information as he may require in order to determine an applicant's eligibility. All information provided to the Mayor under this section shall be confidential and shall not be disclosed to any person except to parties and their attorneys, officials, and employees conducting proceedings under this chapter.

(b) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for the relocation compensation payable under section 5-1305(b), then such applicant shall be presumed to be an eligible recipient. Within fifteen (15) working days from receipt of the completed application, the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid, and the address at which such payment should be delivered. Each declarant shall make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he is liable to that eligible recipient. The payment of relocation compensation is subject to review pursuant to section 5-1307(d).

(c) (1) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for housing assistance payable under section 5-1305(a), then such applicant shall be presumed to be an eligible recipient. The Mayor shall notify the appropriate declarant of the amount of housing assistance payment due, to whom it shall be paid, and the address at which such payment should be delivered.

(2) In the event that a declarant believes either that the recipient is not an eligible recipient, or has not met the requirements of section 5-1305(a), or that the payment to that recipient should be lower than the amount indicated by the Mayor for housing assistance payments, he may seek review of the eligibility of the recipient, the recipient's eligibility under section 5-1305(a), and the amount of such payment by (1) making the payment indicated to the Mayor and (2) filing a notice of appeal and request for a hearing with the Mayor within (10) days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made.

Based on the record of the hearing, the Mayor shall determine whether the recipient is actually eligible for the payment as indicated in the Mayor's notice, or whether the amount of the payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, he shall issue an order to that effect, and shall refund to the declarant such excess monies, as is appropriate.

(d) The Mayor may review bi-annually, or earlier upon request by a declarant, both the continued eligibility of a recipient for housing assistance and the amount of such payments. (Sept. 28, 1979, D.C. Law 3-19, § 9, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 8 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

Section referred to in sections. 5-1305, 5-1307.

§ 5-1309. Payments of housing assistance.

The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if the Mayor elects not to make a lump-sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose. (Sept. 28, 1979, D.C. Law 3-19, § 10, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 9 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

§ 5-1310. Relocation advisory services.

Whenever a building in the District of Columbia is converted from rental to cooperative units, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted building, as provided for by section 5-732a. (Sept. 28, 1979, D.C. Law 3-19, § 11, 26 DCR 361.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 10 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680).

Legislative History of Law 3-19. See note to § 5-1301.

§ 5-1311. Promulgation of regulations.

The Mayor is authorized to promulgate regulations to effectuate the provisions of this chapter. (Sept. 28, 1979, D.C. Law 3-19, § 13, 26 DCR 361.)

Legislative History of Law 3-19. See note to § 5-1301.

TITLE 6.—HEALTH AND SAFETY

| Chap. | Sec. |
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| 5. Garbage | 6-501 |
| 5A. Hazardous Waste Management | 26-521 |
| 8. Air Pollution Control | 6-801 |
| 12. Office of Civil Defense | 6-1201 |
| 16A. Mental Health Information | 6-1611 |
| 16B. Constitutional Rights of Mentally Retarded Citizens | 6-1651 |
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CHAPTER 5.—GARBAGE

Sec.
6-502. Mayor may contract for collection and disposal of
garbage and refuse.

§ 6-501. Regulations for the collection and disposal of garbage to be made by Council —
Penalties.

NOTES TO DECISIONS

Cited in *Director, Office of Workers' Comp. Programs*
v. Cooper Assocs. (1979, 607 F.2d 1385, — U.S. App. D.C.
—).

§ 6-502. Mayor may contract for collection and disposal of garbage and refuse.

The Mayor is authorized to enter into contracts for the collection and disposal of garbage, waste, refuse, ashes, sewage, and sludge for periods not exceeding twenty (20) years, subject to such criteria as the Council may by act establish and to annual appropriations by Congress: Provided, that any such contract which is for a period of more than five (5) years shall not be valid unless, with respect to that particular contract, the Council by a two-thirds (²/₃) vote of its members present and voting has first authorized such an extended contract. (May 18, 1910, 36 Stat. 389, ch. 248; Mar. 3, 1915, 38 Stat. 904, ch. 80; Apr. 6, 1978, D.C. Law 2-69, § 4, 24 DCR 6800.)

Effect of Amendment.
1978 — Act Apr. 6, 1978, D.C. Law 2-69, amended section generally.
Legislative History of Law 2-69. Law 2-69 was introduced in Council and assigned Bill No. 2-99, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first,

amended first, second amended first and final readings on July 26, 1977, September 13, 1977, October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 27, 1978, it was assigned Act No. 2-135 and transmitted to both Houses of Congress for its review.
Compiler's changes. The word "two-third" has been changed to "two-thirds" at the end of the proviso.

CHAPTER 5A.—HAZARDOUS WASTE MANAGEMENT

Sec.

- 6-521. Purposes and findings.
- 6-522. Definitions.
- 6-523. Permits.
- 6-524. Hazardous waste management plan.
- 6-525. Rulemaking.
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Sec.

- 6-527. Inspections; right of entry.
- 6-528. Appeal procedures.
- 6-529. Suspension and revocation of a permit.
- 6-530. Injunction.
- 6-531. Penalties.
- 6-532. Severability.

§ 6-521. Purposes and findings.

(a) The purposes of this chapter are:

- (1) to insure safe and effective hazardous waste management; and
- (2) to establish a program of regulation over the storage, transportation, treatment, and disposal of hazardous wastes in the District of Columbia.

(b) The Council of the District of Columbia finds that:

- (1) increasing production and consumption rates, continuing technological development, and energy requirements have led to the generation of greater quantities of hazardous waste;
- (2) the problems of disposing of hazardous waste are increasing as a result of air and water pollution controls and a shortage of available landfill sites;
- (3) while it is technologically and financially feasible for hazardous waste generators to dispose of their wastes in a manner which has a less adverse impact on the environment than current practices, such knowledge is not being utilized to the extent possible;
- (4) even though the District of Columbia is not heavily industrialized, there is a significant daily hazardous waste disposal problem; and
- (5) the public health and safety, and the environment, are threatened where hazardous wastes are not managed in an environmentally sound manner.

(Mar. 23, 1978, D.C. Law 2-64, § 2, 24 DCR 6289.)

Legislative History of Law 2-64. Law 2-64 was introduced in Council and assigned Bill No. 2-163, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 20,

1978, it was assigned Act No. 2-133 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Mar. 23, 1978, D.C. Law 2-64, provided "That this act may be cited as the 'District of Columbia Hazardous Waste Management Act of 1977.'"

§ 6-522. Definitions.

For purposes of this chapter:

(a) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

(b) The term "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

(c) The term "generation" means the act or process of producing hazardous waste.

(d) The term "Mayor" means the Mayor of the District of Columbia or his or her designated agent.

(e) The term “person” means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or other entity.

(f) The term “storage” means containment in such a manner as not to constitute disposal.

(g) The term “transport” means the movement from the point of generation to any intermediate site, and finally to the point of ultimate storage or disposal.

(h) The term “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize or as to render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume.

(i) The term “treatment facility” means a location for treatment, including an incinerator or a facility where generation has occurred.

(Mar. 23, 1978, D.C. Law 2-64, § 3, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-523. Permits.

(a) One year after the effective date of this chapter, it will be unlawful to construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, or to store, transport, treat, or dispose of any hazardous waste without first obtaining a permit from the Mayor for such facility, site, or activity.

(b) The Mayor is authorized to issue, vary or modify the terms of any permit, or to suspend, revoke, or deny a permit to achieve the purposes of this chapter, except that the Mayor may not issue a permit for a period exceeding one (1) year. The Mayor may establish the appropriate permit fee to cover the costs associated with its issuance. (Mar. 23, 1978, D.C. Law 2-64, § 4, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

Section referred to in section. 6-529.

§ 6-524. Hazardous waste management plan.

Within six (6) months of the effective date of this chapter, the Mayor shall publish in the District of Columbia Register a hazardous waste management plan for the District of Columbia, which shall include, as a minimum:

(a) a description of the criteria for determining what constitutes a hazardous waste;

(b) identification of the types and quantities of hazardous wastes generated in the District of Columbia, of hazardous wastes which may be amenable for recycling or reuse, of current hazardous waste management practices, of proper procedures for the handling, storage and transportation of hazardous wastes and of the best methods and facilities or sites (including possible extrajurisdictional sites) for the storage, treatment or disposal of hazardous wastes; and

(c) a comparison of the alternatives, costs and benefits of public and private transportation, storage, treatment, and disposal of hazardous wastes.

(Mar. 23, 1978, D.C. Law 2-64, § 5, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

Section referred to in section. 6-525.

§ 6-525. Rulemaking.

(a) Within three (3) months after publication of the plan required in section 6-524, the Mayor shall adopt, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505), and may thereafter revise as appropriate, rules and regulations necessary to carry out the purposes and provisions of this chapter, including, but not limited to:

(1) rules and regulations regarding the following aspects of proper hazardous waste management:

- (A) criteria for determining what constitutes a hazardous waste;
- (B) storage, treatment, and disposal of hazardous wastes;
- (C) transportation, containerization, and labeling of hazardous wastes (consistent with those issued by the United States Department of Transportation);
- (D) on-site handling, including the separation and combination of hazardous wastes;
- (E) operation and maintenance of hazardous waste treatment or disposal facilities or sites;
- (F) certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites; and
- (G) procedures and requirements for the use of a manifest or form which identifies the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(b) At the time of publication of the proposed rules and regulations referred to in this section, a copy of the same shall be provided to the Council of the District of Columbia. (Mar. 23, 1978, D.C. Law 2-64, § 6, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-526. Variance.

The Mayor may grant a variance not to exceed one hundred and eighty (180) days upon a showing that compliance with the requirements of this chapter or the rules and regulations promulgated pursuant thereto would result in an unreasonable financial hardship, and that the public health and welfare would not be endangered. (Mar. 23, 1978, D.C. Law 2-64, § 7, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-527. Inspections; right of entry.

(a) For the purpose of enforcing this chapter or any rule or regulation promulgated pursuant to this chapter, the Mayor may at any reasonable time, within reasonable limits, and in a reasonable manner, upon presenting appropriate credentials to the owner, operator or agent in charge:

- (1) enter without delay any place where hazardous wastes are generated, stored, treated, or disposed;
- (2) inspect and obtain samples of any waste, or substance used in the treatment of waste;
- (3) inspect and copy any records, reports, information, or test results relating to the purposes of this chapter. Each such inspection shall be commenced and completed with reasonable promptness.

(b) If the officer or employee obtains any samples prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the sample obtained, and if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge. (Mar. 23, 1978, D.C. Law 2-64, § 8, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-528. Appeal procedures.

Any person adversely affected by an action taken pursuant to the provisions of this chapter or the rules and regulations promulgated thereto is entitled to a hearing before the Mayor upon filing with the Mayor, within fifteen (15) days of the date of such action, a written request for a hearing. Such hearing shall be held in accordance with other contested case procedures under the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). The decision on the appeal shall be final. (Mar. 23, 1978, D.C. Law 2-64, § 9, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-529. Suspension and revocation of a permit.

(a) The Mayor may suspend a permit issued in accordance with section 6-523 for a period not to exceed three (3) months if the holder of the permit is in violation of this chapter or the rules and regulations promulgated pursuant thereto. Written notice of the suspension shall be served upon the affected party or his or her designated agent. If no appeal is filed within ten (10) days of receipt of this notice, the suspension shall become final.

(b) Where there is a history of repeated violations and/or a permit has been previously suspended, the Mayor may revoke a permit, upon a showing of subsequent violation, and upon providing the affected party, or his or her designated agent, with written notice of the intent to revoke the permit, with an opportunity for a hearing prior to revocation. The revocation shall take effect fifteen (15) days after the notice has been given, unless a written request for a hearing is received by the Mayor within that period.

(c) Where a permit has been revoked, the person affected has the right to reapply for a permit. If this person is able to demonstrate an ability and willingness to comply with the permit and with the provisions of this chapter, and the rules and regulations promulgated pursuant thereto, the Mayor may consider granting this new permit. (Mar. 23, 1978, D.C. Law 2-64, § 10, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-530. Injunction.

Notwithstanding any other provision of this chapter, if the Mayor finds that any person is operating a storage, treatment, or disposal facility or site, or is transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner as to endanger the public health or welfare, the Mayor may order such person to immediately discontinue the act. Upon failure to comply with this order, the Mayor may request the Corporation Counsel to commence appropriate civil action in the District of Columbia Superior Court to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief. (Mar. 23, 1978, D.C. Law 2-64, § 11, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-531. Penalties.

(a) Whenever the Mayor has reason to believe that there has been a violation of this chapter or of the rules and regulations promulgated pursuant thereto, the Mayor may, in lieu of, or in addition to any other enforcement procedure, give written notice of such alleged violation to the person or persons responsible therefor, and order these persons to take such corrective measures as are deemed reasonable and necessary. This notice shall state the nature of the violation and shall allow reasonable time for the performance of the necessary corrective measures. If a person fails to comply with this notice within the time period stated in the notice, the Mayor shall institute such action as may be necessary to terminate the violation.

(b) Notwithstanding any other provision of this chapter, any person who violates any provision of this chapter or of the rules and regulations promulgated pursuant thereto shall be punished by a fine not to exceed ten thousand dollars (\$10,000) or imprisonment not to exceed six (6) months, or both. In the event of any violation, each and every day of such violation shall constitute a separate offense, and the penalties prescribed herein shall be applicable to each such separate offense. (Mar. 23, 1978, D.C. Law 2-64, § 12, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

§ 6-532. Severability.

Each separate provision of this chapter shall be deemed independent of any other provision of this chapter, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this chapter or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this chapter would have been enacted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this chapter or any part thereof is inapplicable had been specifically exempted therefrom. (Mar. 23, 1978, D.C. Law 2-64, § 13, 24 DCR 6289.)

Legislative History of Law 2-64. See note to § 6-521.

CHAPTER 8.—AIR POLLUTION CONTROL

| Subchapter I.—General Provisions | | Sec. |
|--|--|------------------------------|
| Sec. | | 6-822. Definitions. |
| 6-812. Emission and air quality standards established by the District of Columbia Council. | | 6-823. Smoking restrictions. |
| | | 6-824. Posting of signs. |
| | | 6-825. Enforcement. |
| | | 6-826. Penalties. |
| | | 6-827. Severability. |
| Subchapter II.—Restriction on Smoking | | |
| 6-821. Findings and purpose. | | |

Subchapter I.—General Provisions

§ 6-812. Emission and air quality standards established by the District of Columbia Council.

(a)

* * * * *

(5) The Council may impose in any regulation prescribed under this chapter a fine (not to exceed \$5,000) or imprisonment (not to exceed ninety days), or both, for a violation of such regulation; and may provide that if such violation is a continuing one, each day of such violation shall constitute a separate offense.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-133, § 3, 25 DCR 3490.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-133, amended section by substituting “\$5,000” for “\$300” in paragraph (5) of subsection (a).

Legislative History of Law 2-133. Law 2-133 was introduced in Council and assigned Bill No. 2-319, which

was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on October 16, 1978, it was assigned Act No. 2-280 and transmitted to both Houses of Congress for its review.

Subchapter II.—Restriction on Smoking

§ 6-821. Findings and purpose.

(a) The Council of the District of Columbia finds that the inhalation of concentrated smoke resulting from the smoking of tobacco in facilities in which the public congregates is a clear danger to health and a cause of inconvenience and discomfort to persons present in such facilities.

(b) The purpose of this chapter is to protect the public health, comfort and environment by prohibiting smoking in certain facilities and vehicles open to or used by the general public.

(c) Except to the extent that section 8 of D.C. Law 3-22 modifies Title 7 (Fire Department Fire Prevention Code) of the D.C. Rules and Regulations, this chapter is intended to complement the provisions of Part 2 of those regulations and the provisions of sections 44-216 to 44-218, which regulate public conduct on public passenger vehicles. It is not the intent of this chapter to derogate in any manner from the provisions of Part 2 of Title 7 of the D.C. Rules and Regulations, as amended by this subchapter, or from section 44-216(1). (Sept. 28, 1979, D.C. Law 3-22, § 2, 26 DCR 390.)

Legislative History of Law 3-22. Law 3-22 was introduced in Council and assigned Bill No. 3-109, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on May 22, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-66 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Sept. 28, 1979, D.C. Law 3-22, provided: "That this act may be cited as the

'District of Columbia Smoking Restriction Act of 1979'."

Effective date. Section 10 of Act Sept. 28, 1979, D.C. Law 3-22, provided that this act shall take effect sixty (60) days after the expiration of the thirty (30) day review period provided for acts of the Council of the District of Columbia in section 602 (c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

§ 6-822. Definitions.

For the purpose of this subchapter:

(a) "Educational facility" means any enclosed indoor area used primarily for instruction of enrolled students, including day care centers, nursery schools, elementary schools, and secondary schools, but excluding institutions of higher education. The term "educational facility" shall include all enclosed indoor areas supportive of instruction, including, but not limited to, classrooms, cafeterias, study areas and libraries, but excluding faculty lounges and specific areas approved by the principal of a given school pursuant to guidelines established by the Superintendent of Schools or the head of such private institutions.

(b) "Health care facility" means any institution providing individual care or treatment of diseases or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, clinics, laboratories, nursing homes or homes for the aged or chronically ill, but excluding private medical offices.

(c) "Mayor" means the Mayor of the District of Columbia or his designated agent.

(d) "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.

(e) "Restaurant" means any building, structure or area used as, maintained as, advertised as or held out to the public to be an enclosure where meals for consideration or payment are made available to be consumed on the premises.

(f) "Retail store" means any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise or food for consumption off the premises, and all activities, operations and services connected therewith or incidental thereto. The term "retail store" shall not include separate areas of a retail store which are used as a restaurant.

(g) "Smoking" or "to smoke" means the act of puffing, holding or carrying a lighted or smoldering cigar, cigarette, pipe or smoking equipment of any kind or lighting a cigar, cigarette, pipe or smoking equipment of any kind. (Sept. 28, 1979, D.C. Law 3-22, § 3, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.

§ 6-823. Smoking restrictions.

Smoking shall be prohibited in the following:

- (a) any elevator, except in a single-family dwelling;
- (b) any public selling area of a retail store, except in a tobacco shop or store primarily concerned with selling tobacco and smoking equipment;
- (c) any public assembly or hearing room which is owned or leased by any branch, agency, or instrumentality of the District of Columbia government; this subsection shall not apply to the District of Columbia Armory or to the Robert F. Kennedy Stadium;
- (d) any educational facility owned or leased by any branch, agency, or instrumentality of the District of Columbia government;
- (e) while transporting passengers within the corporate limits of the District of Columbia, any passenger vehicle owned or operated by the District of Columbia government, or any passenger vehicle for hire regulated under section 47-2331, without prior consent of all occupants of the vehicles;
- (f) any area of a health care facility frequented by the general public, including hallways, waiting rooms and lobbies. The operator of a health care facility may designate separate areas as smoking areas.

(1) When a health care facility permits patients to smoke in bed space areas, such facility shall make a reasonable effort to determine a patient's individual nonsmoking or smoking preference and assign patients who are to be placed in bed space areas utilized by two (2) or more patients to a bed space area with patients who have a similar smoking preference.

(2) Hospital staff, visitors and the general public shall not smoke in bed space areas utilized by nonsmoking patients. "NO SMOKING" signs shall be conspicuously posted in such bed space areas.

(Sept. 28, 1979, D.C. Law 3-22, § 4, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.
Section referred to in section. 6-824.

§ 6-824. Posting of signs.

(a) Every facility where smoking is prohibited by subsections (b), (c), (d), and (f) of section 6-823 shall have a no smoking sign prominently displayed at each entrance to the facility. Every elevator or vehicle where smoking is prohibited by subsections (a) and (e) of section 6-823 shall have a no smoking sign prominently displayed within the elevator or vehicle.

(b) All signs posted pursuant to subsection (a) of this section shall either (1) be printed with capital letters no less than 1⁵/₈ inches high and 1¹/₈ inches wide reading "NO SMOKING," displayed on a contrasting background, or (2) be the internationally recognized "NO SMOKING" sign.

(c) It shall be unlawful for any person to obscure, remove, deface, mutilate or destroy any sign posted in accordance with the provisions of this subchapter. (Sept. 28, 1979, D.C. Law 3-22, § 5, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.

§ 6-825. Enforcement.

(a) The owner, lessee, manager, operator or other person in charge of a facility or vehicle where smoking is prohibited pursuant to this chapter shall:

- (1) post the appropriate "No-Smoking" signs; and
- (2) ask persons smoking in violation of this subchapter to refrain from smoking.

(b) Whenever the owner, lessee, manager or operator of a facility covered by this subchapter requires a license issued by the District of Columbia government in order to operate the facility,

the owner, lessee, manager or operator shall comply with this subchapter as a requirement for receiving or renewing the license. Where an on-site inspection is required prior to issuance or renewal of a license, the inspector should certify that the appropriate signs have been posted. In those cases where an on-site inspection is not needed, a signed statement by the applicant that he has complied with this subchapter shall constitute sufficient evidence of compliance as required in this subsection. Violation of this subchapter shall be grounds for license suspension or revocation.

(c) The Mayor is authorized to promulgate any regulations needed to carry out the provisions of this subchapter.

(d) An aggrieved person or class of persons may bring an action in the Superior Court of the District of Columbia for injunctive relief to prevent any owner, lessee, manager, operator or person otherwise in charge of a facility or vehicle where smoking is prohibited pursuant to this subchapter from violating, or continuing to violate, any provision of this subchapter. For the purposes of this subsection, an “aggrieved person” shall be defined as any person subjected to tobacco smoke due to failure to comply with this subchapter. (Sept. 28, 1979, D.C. Law 3-22, § 6, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.

§ 6-826. Penalties.

(a) Any person who violates any provision of this subchapter, other than section 8 of D.C. Law 3-22, by:

(1) smoking in a posted “No Smoking” area shall, upon conviction, be punishable by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) for a first offense; and not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each second or subsequent offense; or

(2) obscuring, removing, defacing, mutilating or destroying any sign posted in accordance with the provisions of this subchapter shall, upon conviction, be punishable by a fine of not more than three hundred dollars (\$300); or

(3) failing to post or cause to be posted “no smoking” signs, as required by this chapter, shall, upon conviction, be punishable by a fine of not more than three hundred dollars (\$300). Each and every day that the violation continues shall constitute a separate offense, and the penalties provided for in this paragraph shall be applicable to each separate offense: Provided, that such penalties shall not be levied against any employee or officer of any branch, agency or instrumentality of the District of Columbia government.

(b) The Mayor is authorized to establish procedures for the issuance of a citation to any person who violates this chapter requiring the person to post collateral in accordance with section 16-704 to assure the person’s appearance in the Superior Court of the District of Columbia to answer the citation, and such collateral may be forfeited in lieu of an appearance as the Court may direct.

(c) Issuances of citations pursuant to subsection (b) of this section shall not constitute arrests nor shall forfeitures of collateral pursuant to said subsection constitute convictions. Records which may be maintained in connection with the implementation of this section shall not constitute records of arrest under section 4-134a, relating to arrest records, or paragraph (4) of section 4-134. (Sept. 28, 1979, D.C. Law 3-22, § 7, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.

§ 6-827. Severability.

If any provision of this subchapter, or its application to a particular person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter. (Sept. 28, 1979, D.C. Law 3-22, § 9, 26 DCR 390.)

Legislative History of Law 3-22. See note to § 6-821.

CHAPTER 12.—OFFICE OF CIVIL DEFENSE

Sec.

6-1203. Powers and duties.

§ 6-1203. Powers and duties.

The Office of Civil Defense is authorized and directed, subject to the direction and control of the Commissioner of the District —

* * * * *

(e) to employ such technical, clerical, stenographic, and other personnel and make such expenditures within appropriations thereof or from other funds made available for purposes of civil defense, as may be necessary to carry out the purposes of this chapter;

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (tt), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section, in subsection (e), by deleting “in accordance with the civil service laws and regulations” at the beginning of the subsection, “and fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” following “personnel”

and the two provisos which formerly appeared at the end of the subsection, and by substituting “thereof” for “therefor.”

Legislative History of Law 2-139. See note to § 1-331.1. Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108).

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*Subchapter I.—Definitions and General Provisions***§ 6-1611. Definitions.**

For purposes of this chapter:

- (a) “administrative information” means a client’s name, age, sex, address, identifying number or numbers, dates and character of sessions (individual or group), and fees;
- (b) “client” means any individual who receives or has received professional services from a mental health professional in a professional capacity;
- (c) “client representative” means an individual specifically authorized by the client in writing or by the court as the legal representative of that client;
- (d) “data collector” means a person other than the client, mental health professional and mental health facility who regularly engages, in whole or in part, in the practice of assembling or evaluating client mental health information;
- (e) “diagnostic information” means a therapeutic characterization which is of the type that is found in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or any comparable professionally recognized diagnostic manual;
- (f) “disclose” means to communicate any information in any form (written, oral or recorded);
- (g) “group session” means the provision of professional services jointly to more than one (1) client in a mental health facility;
- (h) “insurance transaction” means whenever a decision (be it adverse or otherwise) is rendered regarding an individual’s eligibility for an insurance benefit or service;
- (i) “mental health information” means any written, recorded or oral information acquired by a mental health professional in attending a client in a professional capacity which (1) indicates the identity of a client and (2) relates to the diagnosis or treatment of a client’s mental or emotional condition;
- (j) “mental health facility” means any hospital, clinic, office, nursing home, infirmary or similar entity where professional services are provided;
- (k) “mental health professional” means any of the following persons engaged in the provision of professional services;
 - (1) a person licensed to practice medicine;
 - (2) a person licensed to practice psychology;
 - (3) a professional clinical or psychiatric social worker;
 - (4) a professional marriage, family or child counselor;
 - (5) a licensed nurse who is a professional psychiatric nurse; and
 - (6) any person reasonably believed by the client to be a mental health professional within the meaning of paragraphs (1) through (5) of this subsection;
- (l) “person” means any governmental organization or agency or part thereof, individual, firm, partnership, copartnership, association or corporation;
- (m) “personal notes” means mental health information regarding a client which is limited to:
 - (1) mental health information disclosed to the mental health professional in confidence by other persons on condition that such information not be disclosed to the client or other persons; and
 - (2) the mental health professional’s speculations;
- (n) “professional services” means any form of diagnosis or treatment relating to a mental or emotional condition that is provided by a mental health professional;
- (o) “third party payor” means any person who provides accident and sickness benefits or medical, surgical or hospital benefits whether on an indemnity, reimbursement, service or

prepaid basis, including, but not limited to, insurance carriers, governmental agencies and employers.

(Mar. 3, 1979, D.C. Law 2-136, § 101, 25 DCR 5055.)

Legislative History of Law 2-136. Law 2-136 was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned

Act No. 2-292 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-136, provided: "That this act may be cited as the 'District of Columbia Mental Health Information Act of 1978'."

§ 6-1612. Scope.

(a) Except as specifically authorized by subchapter II, III or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information. (Mar. 3, 1979, D.C. Law 2-136, § 102, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1613. Personal notes.

If a mental health professional makes personal notes regarding a client, such personal notes shall not be maintained as a part of the client's record of mental health information. Notwithstanding any other provision of this chapter, access to such personal notes shall be strictly and absolutely limited to the mental health professional and shall not be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of professional malpractice or disclosure in violation of this section. (Mar. 3, 1979, D.C. Law 2-136, § 103, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1633.

§ 6-1614. General rules governing disclosures.

(a) Upon disclosure of any of the client's mental health information pursuant to subchapter II, III or IV of this chapter, a notation shall be entered and maintained with the client's record of mental health information which includes:

- (1) the date of the disclosure;
- (2) the name of the recipient of the mental health information; and
- (3) a description of the contents of the disclosure.

(b) All disclosures of mental health information, except on an emergency basis as provided in section 6-1624, shall be accompanied by a statement to the effect that:

The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978. Disclosures may only be made pursuant to a valid authorization by the client or as provided in title III or IV of that act. The act provides for civil damages and criminal penalties for violations.

(Mar. 3, 1979, D.C. Law 2-136, § 104, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Subchapter II.—Disclosures With the Client's Consent

§ 6-1615. Disclosures by client authorization.

Except as provided in section 6-1620, a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose mental health information and a client in a group session may disclose mental health information upon the voluntary written authorization of the person or persons who have the power to authorize disclosure under section 6-1619. (Mar. 3, 1979, D.C. Law 2-136, § 201, DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in sections. 6-1616, 6-1617.

§ 6-1616. Form of authorization.

(a) Any written authorization which authorizes disclosure pursuant to section 6-1615 shall:

(1) specify the nature of the information to be disclosed, the type of persons authorized to disclose such information, to whom the information may be disclosed and the specific purposes for which the information may be used both at the time of the disclosure and at any time in the future;

(2) advise the client of his right to inspect his record of mental health information;

(3) state that the consent is subject to revocation, except where an authorization is executed in connection with a client's obtaining a life or noncancellable or guaranteed renewable health insurance policy, in which case the authorization shall be specific as to its expiration date which shall not exceed two (2) years from the date of the policy; or where an authorization is executed in connection with the client's obtaining any other form of health insurance in which case the authorization shall be specific as to its expiration date which shall not exceed one (1) year from the date of the policy;

(4) be signed by the person or persons authorizing the disclosure; and

(5) contain the date upon which the authorization was signed.

(b) Any authorization executed pursuant to subsection (a) shall apply only to the disclosure of mental health information which exists as of the date of the authorization.

(c) A copy of such authorization shall:

(1) be provided to the client and the person authorizing the disclosure;

(2) accompany all such disclosures; and

(3) be included in the client's record of mental health information.

(Mar. 3, 1979, D.C. Law 2-136, § 202, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1618.

§ 6-1617. Prohibition against redisclosure.

Mental health information disclosed pursuant to this subchapter cannot be further disclosed by the recipient without authorization as provided in section 6-1615. (Mar. 3, 1979, D.C. Law 2-136, § 203, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1618. Revocation of authorization.

Except as provided in section 6-1616(a)(3), the person or persons who authorize a disclosure may revoke an authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, mental health facility or data collector authorized to disclose mental health information. The revocation of authorization shall be effective upon receipt. After the effective revocation date, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization. (Mar. 3, 1979, D.C. Law 2-136, § 204, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1619. Power to grant authorization.

(a) When a client is eighteen (18) years of age or over, the client or client representative shall have the power to authorize disclosures.

(b) When a client is under the age of eighteen (18), but beyond the age of fourteen (14), disclosures which require authorization may only be authorized by the joint written authorization of the client and a parent of the client or legal guardian. When a client is less than fourteen (14) years of age, disclosures which require authorization may only be authorized by the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian. (Mar. 3, 1979, D.C. Law 2-136, § 205, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.
Section referred to in section. 6-1615.

§ 6-1620. Authority of mental health professional to limit authorized disclosures.

(a) The mental health professional primarily responsible for the diagnosis or treatment of a client may refuse to disclose or limit disclosure of the client's mental health information even though such mental health information is disclosable by virtue of a valid authorization: Provided, that:

(1) such mental health professional reasonably believes that such refusal or limitation on disclosure is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury; and

(2) the mental health professional notifies the person or persons who authorized the disclosure, in writing, of: (A) The refusal or limitation on disclosure; (B) the reasons for such refusal or limitation; and (C) the remedies under this chapter: Provided, further, that, in an insurance transaction, the mental health professional shall inform the insurer that the authorized disclosure was refused or limited.

(b) In the event the disclosure is limited by the mental health professional pursuant to subsection (a) of this section, the person or persons who authorized the disclosure may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional may authorize disclosure in whole or in part if, after a complete review of the client's record of mental health information, the independent mental health professional determines that the disclosure does not pose to the client a substantial risk of imminent psychological impairment or pose a substantial risk of imminent and serious physical injury to the client or another individual.

(c) A person who has taken action to achieve disclosure in accordance with subsection (b) of this section may institute an action in the Superior Court of the District of Columbia to compel the disclosure of all or any part of the record of the client's mental health information which was not disclosed by the mental health professionals. An action instituted under this subsection shall be brought within six (6) months of the denial, in whole or in part, of the disclosure by the independent mental health professional or the denial, in whole or in part, of disclosure to the independent mental health professional by the mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of subsection (b) of this section: Provided, that the action is brought within six (6) months of the denial, in whole or in part, of the disclosure by the mental health professional. If the person who instituted the action establishes that he executed a valid authorization which was transmitted to the mental health professional prior to the denial of disclosure by such mental health professional, the burden of proof shall then be placed upon the mental health professional to establish, by a preponderance of the evidence, that the denial of disclosure was in conformity with paragraphs (1) and (2) of subsection (a) of this section.

(d) Any refusal or limitation on disclosure shall be noted in the client's record of mental health information including, but not limited to, the names of the mental health professionals involved, the date of the refusal or limitation, the requested disclosure and the actual disclosure, if any.

(e) This section shall not apply to disclosures under section 21-562 (concerning the disclosure of records of a client hospitalized in a public hospital for a mental illness) or court related disclosures under subchapter IV of this chapter. (Mar. 3, 1979, D.C. Law 2-136, § 206, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1615.

§ 6-1621. Limited disclosure to third party payors.

(a) A mental health professional or mental health facility may disclose to a third party payor mental health information necessary to determine the client's entitlement to, or the amount of, payment benefits for professional services rendered: Provided, that the disclosure is pursuant to a valid authorization and that the information to be disclosed is limited to:

- (1) administrative information;
- (2) diagnostic information;
- (3) the status of the client (voluntary or involuntary);
- (4) the reason for admission or continuing treatment; and
- (5) a prognosis limited to the estimated time during which treatment might continue.

(b) In the event the third party payor questions the client's entitlement to or the amount of payment benefits following disclosure under subsection (a) of this section, the third party payor may, pursuant to a valid authorization, request an independent review of the client's record of mental health information by a mental health professional or professionals. Mental health information disclosed for the purpose of review shall not be disclosed to the third party payor. (Mar. 3, 1979, D.C. Law 2-136, § 207, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Subchapter III.—Exceptions

§ 6-1622. Disclosures within a mental health facility.

Mental health information may be disclosed to other individuals employed at the individual mental health facility when and to the extent necessary to facilitate the delivery of professional services to the client. (Mar. 3, 1979, D.C. Law 2-136, § 301, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1623. Disclosures required by law.

Mental health information may be disclosed by a mental health professional or mental health facility where necessary and, to the extent necessary, to meet the requirements of section 21-586 (concerning financial responsibility for the care of hospitalized persons) or to meet the compulsory reporting provisions of District or federal law which attempt to promote human health and safety. (Mar. 3, 1979, D.C. Law 2-136, § 302, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1624. Disclosures on an emergency basis.

(a) Mental health information may be disclosed, on an emergency basis, to one or more of the following: the client's spouse, parent, legal guardian, a duly accredited officer or agent of the District of Columbia in charge of public health, an officer authorized to make arrests in the District of Columbia or an intended victim if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under section 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.

(b) Mental health information disclosed to the Metropolitan Police Department pursuant to this section shall be maintained separately and shall not be made a part of any permanent police record. Such mental health information shall not be further disclosed except as a court related disclosure pursuant to subchapter IV of this chapter. If no judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations governing the nature of the judicial action, the mental health information shall be destroyed. If a judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations, the mental health information shall be destroyed at the termination of the judicial action. (Mar. 3, 1979, D.C. Law 2-136, § 303, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1614.

§ 6-1625. Disclosures for collection of fees.

(a) A mental health professional or mental health facility may disclose the administrative information necessary for the collection of his or its fee from the client to a person authorized by the mental health professional or mental health facility for the collection of a fee from such client if the client or client representative has received a written notification that the fee is due and has failed to arrange for payment with the mental health professional or mental health facility within a reasonable time after such notification.

(b) In the event of a claim in any civil action for the collection of such a fee, no additional mental health information shall be disclosed in litigation, except to the extent necessary:

- (1) to respond to a motion of the client or client representative for greater specificity; or
- (2) to dispute a defense or counterclaim.

(Mar. 3, 1979, D.C. Law 2-136, § 304, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1626. Disclosures for research, auditing and program evaluation.

A mental health professional or mental health facility may disclose mental health information to qualified personnel, if necessary, for the purpose of conducting scientific research or management audits, financial audits or program evaluation of the mental health professional or mental health facility: Provided, that such personnel have demonstrated and provided

assurances, in writing, of their ability to insure compliance with the requirements of this chapter. Such personnel shall not identify, directly or indirectly, an individual client in any reports of such research, audit or evaluation, or otherwise disclose client identities in any manner. (Mar. 3, 1979, D.C. Law 2-136, § 305, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1627. Redisclosure.

Mental health information disclosed pursuant to this subchapter shall not be redisclosed except as specifically authorized by subchapter II, III or IV of this chapter. (Mar. 3, 1979, D.C. Law 2-136, § 306, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Subchapter IV.—Court Related Disclosures

§ 6-1628. Court ordered examinations.

Except as provided elsewhere, by law, mental health information acquired by a mental health professional pursuant to a court ordered examination may be disclosed in a manner provided by rules of court. (Mar. 3, 1979, D.C. Law 2-136, § 401, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1629. Civil commitment proceedings.

Mental health information may be disclosed by a mental health professional when and to the extent necessary to initiate or seek civil commitment proceedings under section 21-541. (Mar. 3, 1979, D.C. Law 2-136, § 402, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1630. Court actions.

Mental health information may be disclosed in a civil or administrative proceeding in which the client or the client representative or, in the case of a deceased client, any party claiming or defending through or a beneficiary of the client initiates his mental or emotional condition or any aspect thereof as an element of the claim or defense. (Mar. 3, 1979, D.C. Law 2-136, § 403, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1631. Redisclosure.

Redisclosure of any mental health information disclosed pursuant to this subchapter shall be governed by order of the court or, if no order is issued, by the rules of the Superior Court of the District of Columbia. (Mar. 3, 1979, D.C. Law 2-136, § 404, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1632. Court records.

A client, client representative or any other party in a civil, criminal or administrative action, in which mental health information has been or will be disclosed, shall have the right to move the court to denominate, style or caption the names of all parties as "John Doe" or otherwise protect the anonymity of all of the parties. (Mar. 3, 1979, D.C. Law 2-136, § 405, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

*Subchapter V. — Client's Right to Access and Right to Correct Information***§ 6-1633. Right to access.**

Except as provided in this subchapter and in section 6-1613, a mental health professional, mental health facility or data collector shall permit any client or client representative, upon written request, to inspect and duplicate the client's record of mental health information maintained by the mental health professional, mental health facility or data collector within thirty (30) days from the date of receipt of the request. A mental health professional, responsible for the diagnosis or treatment of the client, shall have the opportunity to discuss the mental health information with the client or client representative at the time of such inspection. In the case of a request to a data collector for disclosure of mental health information pursuant to this section, the data collector shall grant access either: (a) directly to the requestor; or (b) indirectly by providing the mental health information to a mental health professional designated by the requestor. If the mental health professional designated by the requestor is not the person who disclosed the mental health information to the data collector, he shall be in substantially the same or greater professional class as the mental health professional who disclosed the mental health information to the data collector. (Mar. 3, 1979, D.C. Law 2-136, § 501, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.
Section referred to in section. 6-1636.

§ 6-1634. Authority to limit access.

A mental health professional or mental health facility may limit the disclosure of portions of a client's record of mental health information to the client or client representative only if the mental health professional primarily responsible for the diagnosis or treatment of such client reasonably believes that such limitation is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury. The mental health professional shall notify the client or client representative if the mental health professional does not grant complete access. (Mar. 3, 1979, D.C. Law 2-136, § 502, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1635. Review by an independent mental health professional.

In the event that disclosure of the client's information is limited, the client or client representative may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional shall permit the client or client representative to inspect and duplicate those portions of the client's record of mental health information which, in his judgment, do not pose a substantial risk of imminent psychological impairment to the client or pose a substantial risk of imminent and serious physical injury to the client or another individual. In the event that the independent mental health professional allows the client to inspect and duplicate additional portions of the client's record of mental health

information, the mental health professional primarily responsible for the diagnosis or treatment of the client shall have the opportunity to discuss the information with the client at the time of transmittal, examination and duplication of information. (Mar. 3, 1979, D.C. Law 2-136, § 503, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1636.

§ 6-1636. Judicial action.

A client or client representative who has taken action in accordance with this subchapter may institute an action in the Superior Court of the District of Columbia to compel access to all or any part of the client's record of mental health information which was denied by the mental health professional. An action initiated under this section shall be brought within six (6) months of the denial of access, in whole or in part, by the independent mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of section 6-1635: Provided, that the action is brought within six (6) months of the denial of access, in whole or in part, by the mental health professional. If the person who instituted the action establishes that he made a request for access in compliance with section 6-1633, the burden of proof shall be placed upon the mental health professional to establish by a preponderance of the evidence that the denial of access was in conformity with subchapter V of this chapter. (Mar. 3, 1979, D.C. Law 2-136, § 504, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1637. Right to correct information.

(a) The mental health professional, mental health facility and data collector shall maintain the client's mental health information in an accurate and complete manner.

(b) In the event that the client or client representative questions the accuracy or completeness of the client's record of mental health information, he may, within fifteen (15) days of the date of access, submit a written amendment of reasonable length to the mental health professional, mental health facility or data collector, as the case may be. The mental health professional, mental health facility or data collector shall either:

(1) amend the client's mental health information record in accordance with the proposed amendment; or

(2) include the proposed amendment as part of the client's mental health information record: Provided, that the client may, at his option, withdraw the proposed amendment or file a more concise statement of disagreement as a substitute for the proposed amendment.

(c) If the requested amendment was adopted, the mental health professional, mental health facility or data collector shall either promptly transmit the client's amended record or the requested amendment to all persons to whom the client's unamended mental health information had been disclosed or promptly inform the client of the names and addresses of such persons not receiving the amended record or the requested amendment. In any such disclosure made pursuant to this subsection, the mental health professional, mental health facility or data collector, as the case may be, may also include a statement of reasons for not adopting the requested amendment. (Mar. 3, 1979, D.C. Law 2-136, § 505, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Section referred to in section. 6-1641.

*Subchapter VI.—Security***§ 6-1638. Requirement of security.**

Mental health professionals, mental health facilities and data collectors shall maintain records of mental health information in a secure manner as to effectuate the purposes of this chapter. (Mar. 3, 1979, D.C. Law 2-136, § 601, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1639. Limited access and notice requirement.

Mental health professionals, mental health facilities and data collectors shall provide employees and agents who have lawful access to mental health information in the course of their employment with a written statement of the requirement of maintaining the security of records of mental health information and of the penalties provided in this chapter for unauthorized disclosure. (Mar. 3, 1979, D.C. Law 2-136, § 602, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Effective date. Section 807 (b) of Act Mar. 3, 1979, D.C. Law 2-136, provided that section 6-1639 shall apply sixty (60) days after the effective date of D.C. Law 2-136.

§ 6-1640. Notice requirement — Group sessions.

Mental health professionals shall provide clients in a group session with a written statement of the prohibition against the unauthorized disclosure of mental health information and the penalties provided in this chapter for unauthorized disclosure. (Mar. 3, 1979, D.C. Law 2-136, § 603, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

*Subchapter VII.—Penalties***§ 6-1641. Civil liability.**

(a) Except for violations of section 6-1637(a), any person who negligently violates the provisions of this chapter shall be liable in an amount equal to the damages sustained by the client plus the costs of the action and reasonable attorney's fees.

(b) Except for violations of section 6-1637(a), any person who willfully or intentionally violates the provisions of this chapter shall be liable in damages sustained by the client in an amount not less than one thousand dollars (\$1,000) plus the costs of the action and reasonable attorney's fees.

(c) Either party is entitled to trial by jury, upon request. (Mar. 3, 1979, D.C. Law 2-136, § 701, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1642. Criminal penalties.

(a) Except for violations of subchapter V of this chapter, any person who willfully violates the provisions of this chapter shall be guilty of a misdemeanor and such violator shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than sixty (60) days, or both.

(b) Any person who knowingly obtains mental health information from a mental health professional, mental health facility or data collector, under false pretenses or through deception, shall be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000)

or imprisoned not more than ninety (90) days, or both. (Mar. 3, 1979, D.C. Law 2-136, § 702, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

Subchapter VIII.—Miscellaneous Provisions

§ 6-1643. Penalties under other laws.

Any civil liability or criminal penalty imposed for violation of this chapter is, in addition to and not in lieu of, any civil or administrative remedy, penalty or sanction otherwise authorized by law. This chapter and the penalties prescribed for violations of this chapter shall not supersede but shall supplement all statutes of the District government and the United States government in which similar conduct is prohibited or regulated. (Mar. 3, 1979, D.C. Law 2-136, § 801, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1644. Prescriptions.

Nothing in this chapter shall be construed as limiting or interfering with District of Columbia, state or federal regulation and monitoring of the handling and dispensing of prescription drugs. (Mar. 3, 1979, D.C. Law 2-136, § 802, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1645. Authority of the Commission on Mental Health.

Nothing in this chapter shall be construed to apply to the operations of the Commission on Mental Health. (Mar. 3, 1979, D.C. Law 2-136, § 803, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1646. Prohibition against waiver.

Any consent or agreement purporting to waive the provisions of this chapter is hereby declared to be against public policy and void. (Mar. 3, 1979, D.C. Law 2-136, § 804, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1647. Conflict with federal law.

Nothing in this chapter shall be construed or applied to necessarily require or excuse noncompliance with any provision of any federal law. (Mar. 3, 1979, D.C. Law 2-136, § 806, 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

§ 6-1648. Effective date.

The provisions of this chapter shall take effect pursuant to section 1-147(c)(1) and shall govern all mental health information regardless of when such information came into existence. However, the provisions of this chapter which create liabilities shall only apply to acts or failures to act which occur on or after the effective date. (Mar. 3, 1979, D.C. Law 2-136, § 807(a), 25 DCR 5055.)

Legislative History of Law 2-136. See note to § 6-1611.

CHAPTER 16B.—CONSTITUTIONAL RIGHTS OF MENTALLY RETARDED CITIZENS

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Subchapter I. — Statement of Purpose and Definitions

§ 6-1651. Statement of purpose.

(a) It is the intent of the Council of the District of Columbia to:

(1) assure that mentally retarded persons shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;

(2) secure for each person who may be mentally retarded, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;

(3) encourage and promote the development of the ability and potential of each mentally retarded person in the District to the fullest possible extent, no matter how severe his or her degree of disability;

(4) promote the economic security, standard of living and meaningful employment of mentally retarded persons;

(5) maximize the assimilation of mentally retarded persons into the ordinary life of the community in which they live; and

(6) provide a mechanism for the identification of persons with mental retardation at the earliest age possible.

(b) To accomplish these purposes, the Council of the District of Columbia finds and declares that the design and delivery of care and habilitation services for mentally retarded persons shall be directed by the principles of normalization, and therefore:

(1) community-based services and residential facilities that are least restrictive to the personal liberty of the individual shall be established for mentally retarded persons at each stage of life development;

(2) the use of institutionalization shall be abated to the greatest extent possible;

(3) whenever care in an institution or residential facility is required, it shall be in the least restrictive setting; and

(4) individuals placed in institutions shall be transferred to community or home environments whenever possible, consistent with professional diagnoses and recommendations. (Mar. 3, 1979, D.C. Law 2-137, § 102, 25 DCR 5094.)

Legislative History of Law 2-137. Law 2-137 was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-137, provided: "That this act may be cited as the 'Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978.'"

Section referred to in section. 6-1653.

§ 6-1652. Definitions.

As used in this chapter:

(a) "admission" means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility;

(b) "at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency;

(c) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of mentally retarded persons, and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for mentally retarded persons to provide or supervise habilitation and care for residents of the facility;

(d) "commitment" means the placement in a facility, pursuant to a court order, of an individual who is at least moderately mentally retarded at the request of the individual's parent or guardian without the consent of the individual; except it shall not include placement for respite care;

(e) "community-based services" means non-residential specialized or generic services for the evaluation, care and habilitation of mentally retarded persons, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a mentally retarded person. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the mentally retarded person and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who are mentally retarded;

(f) "comprehensive evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with

dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons. The evaluation shall include, but not be limited to, a physical examination, an educational and/or vocational evaluation, a psychological evaluation, a social and recreational evaluation, and a speech and hearing evaluation;

(g) "Council" means the Council of the District of Columbia;

(h) "Court" means the Superior Court of the District of Columbia;

(i) "Department of Human Resources" means the Department of Human Resources of the District of Columbia;

(j) "Director" means the administrative head of a facility, or community-based service and includes superintendents;

(k) "District" means the District of Columbia government;

(l) "education" means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a mentally retarded person;

(m) "facility" means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes any supervised group residence for mentally retarded persons under eighteen (18) years of age;

(n) "habilitation" means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. Habilitation includes, but is not limited to, the provision of community-based services;

(o) "informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion;

(p) "least restrictive alternative" means that living and/or habilitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual from (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residences; (5) segregated from the community to integrated with community living and programming; and/or (6) dependent to independent living;

(q) "Mayor" means the Mayor of the District of Columbia;

(r) "Mental Retardation Advocate" means the group of advocates created pursuant to section 6-1680;

(s) "mentally retarded" means a significantly subaverage general intellectual level determined in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency, existing concurrently with impairment in adaptive behavior, which originates during the development period;

(t) "normalization principle" means the principle of aiding mentally retarded persons to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society;

(u) "Qualified Mental Retardation Professional" means a psychologist with at least a master's degree from an accredited program and with specialized training or one (1) year of experience in mental retardation; or a physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in mental retardation or with one (1) year of experience in treating the mentally retarded; or an educator with a degree in education from an accredited program and with specialized training or one (1) year of experience in working with mentally retarded persons; or a social worker with (i) a master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with one (1) year of experience in working with mentally retarded persons, or (ii) with a bachelor's degree

from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in (i) above, and who has specialized training in mental retardation or one (1) year of experience in working with mentally retarded persons; or a rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or one (1) year of experience in working with mentally retarded persons; or a physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or one (1) year of experience in working with mentally retarded persons; or a therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or one (1) year of experience in working with mentally retarded persons;

(v) "resident" means a person admitted or committed to a facility pursuant to subchapter III of this chapter for habilitation services;

(w) "respite care" means temporary overnight care provided to a mentally retarded person in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person;

(x) "respondent" means the person whose commitment or continued commitment is being sought in any proceeding under this chapter;

(y) "time out" means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

(Mar. 3, 1979, D.C. Law 2-137, § 103, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in section. 6-1653.

Subchapter II. — Determination of Need for Mental Retardation Facilities and Services in the District

§ 6-1653. Determination of need for mental retardation facilities and services in the District.

The Mayor shall determine and report to the Council within one (1) year of the enactment of this chapter the current and projected needs in the District for facilities and services for mentally retarded persons, giving due consideration to the statement of purpose as noted in section 6-1651, and a timetable for establishing such facilities or services. The report shall be developed with the assistance, as necessary, from the Department of Human Resources, the District of Columbia Developmental Disabilities Council, the District of Columbia State Health Coordinating Council, the Board of Education of the District of Columbia, the Department of Recreation, the Department of Housing and Community Development, the Department of Transportation and the Department of General Services. It shall be based on a determination of the projected incidence of mental retardation in the District, and on comprehensive evaluations conducted within eight (8) months of the enactment of this chapter of all residents in the facility for the mentally retarded known as Forest Haven. It shall also be based on evaluations of the needs of mentally retarded persons who present themselves for services within six (6) months of the enactment of this chapter, by the Director of such services. The report shall include, but not be limited to, an in-depth analysis of the need for and cost of infant stimulation programs, facilities, work and education programs, recreation programs, transportation services and other community-based services as set forth in subsection (e) of section 6-1652 for mildly, moderately, severely and profoundly mentally retarded persons. (Mar. 3, 1979, D.C. Law 2-137, § 201, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Subchapter III. — Admission, Commitment, Discharge, Transfer, Respite Care

§ 6-1654. Competency to refuse commitment.

No individual fourteen (14) years of age or older who is or is believed to be mentally retarded shall be committed to a facility if the individual is determined by the Court to be competent to refuse such commitment. For purposes of this chapter, persons fourteen (14) years of age and older shall be presumed competent to refuse commitment. (Mar. 3, 1979, D.C. Law 2-137, § 301, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1655. Voluntary admission.

(a) Any individual fourteen (14) years of age or older who is, may be or has been diagnosed mentally retarded may apply to a Director of a facility for voluntary admission to that facility for habilitation and care. The Director may admit the individual: Provided, that the Director has determined that the individual is at least fourteen (14) years of age.

(b) Within three (3) days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within ten (10) days of the admission.

(c) The Court shall promptly appoint an appropriate officer to determine whether the individual is competent to admit himself or herself to the facility and whether the admission is voluntary.

The determination of competency shall consider, but not be limited to, an inquiry into the individual's understanding of what habilitation and care will be provided in the facility, and what alternative means of habilitation and care are available from community-based services.

If the officer determines that there is a substantial question regarding either the voluntariness of the admission or the competency of the individual, the officer shall so advise the Court, and the Court shall promptly conduct a hearing in accordance with the procedures established in subchapter IV of this chapter to resolve the issues of competency and/or voluntariness.

If the Court determines that the admission is not voluntary, the Court shall order that the individual be discharged from the facility. If the Court finds that the individual is not competent to admit himself or herself, it may order that that person be discharged if it determines that discharge would be in the individual's best interest, or it may appoint a guardian ad litem to represent the individual in a subsequent hearing to be held promptly to determine the appropriate placement, if any, of the individual. The individual may remain in the facility until the Court hearing unless the Court decides that this would not be in the individual's best interest. (Mar. 3, 1979, D.C. Law 2-137, § 302, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in sections. 6-1669, 6-1676, 6-1680.

§ 6-1656. Application by individual for out-patient nonresidential habilitation.

Any individual fourteen (14) years of age or older who is, may be or has been diagnosed mentally retarded may apply to any hospital, clinic or facility, or other community-based service owned or operated by, or under contract with, the District for out-patient nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, facility or service, or to the Department of Human Resources. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the individual to the Department of Human Resources, and the Department of Human Resources shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation. (Mar. 3, 1979, D.C. Law 2-137, § 303, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1657. Petition for commitment of individual fourteen years of age or older filed by parent or guardian.

A written petition by a parent or guardian may be filed with the Court to have an individual fourteen (14) years of age or older, who is or is believed to be mentally retarded, committed to a facility. Upon the filing of such petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter. If the Court determines that the individual is competent to refuse such commitment and the individual so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility.

If the Court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

(a) based on a comprehensive evaluation of the individual performed within six (6) months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(b) commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required and defined under section 6-1670;

(c) the facility to which commitment is sought, its sponsoring agency, or the Department of Human Resources is capable of providing the required habilitation; and

(d) commitment to that facility would be the least restrictive means of providing the habilitation.

The facility, its sponsoring agency, or the Department of Human Resources shall provide a written certification to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual habilitation plan will be implemented. (Mar. 3, 1979, D.C. Law 2-137, § 304, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in sections. 6-1661, 6-1670, 6-1674, 6-1676, 6-1680.

§ 6-1658. Application by parent or guardian for nonresidential habilitation.

Any parent or guardian may apply on behalf of an individual under fourteen (14) years of age who is or is believed to be mentally retarded to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department of Human Resources. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the parent or guardian to the Department of Human Resources and the Department of Human Resources shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation. (Mar. 3, 1979, D.C. Law 2-137, § 305, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1659. Petition for commitment of individual under fourteen years of age filed by parent or guardian.

A parent or guardian may file a written petition with the Court to have an individual under fourteen (14) years of age who is or is believed to be mentally retarded committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(a) based on a comprehensive evaluation of the individual performed within six (6) months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(b) commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under section 6-1670;

(c) the facility to which commitment is sought, its sponsoring agency, or the Department of Human Resources is capable of providing the required habilitation; and

(d) commitment to that facility would be the least restrictive means of providing the habilitation.

The facility, its sponsoring agency, or the Department of Human Resources shall provide a written statement to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual's habilitation plan will be implemented. (Mar. 3, 1979, D.C. Law 2-137, § 306, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in sections. 6-1661, 6-1670, 6-1676, 6-1680.

§ 6-1660. Immediate discharge from facility upon request by individual.

Any individual fourteen (14) years of age or older who is admitted to a facility shall have the right to immediate discharge from the facility upon written request to the Director of the facility. (Mar. 3, 1979, D.C. Law 2-137, § 307, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1661. Discharge from commitment upon request by parent or guardian.

Residents committed pursuant to section 6-1657 or section 6-1659 shall be discharged if the parent or guardian who petitioned for the commitment requests the resident's release in writing to the Court and the Court determines, based on consultation with the resident, his or her counsel and the resident's mental retardation advocate, if one has been appointed, that the resident consents to such release. Such residents also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their fourteenth (14th) birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence. (Mar. 3, 1979, D.C. Law 2-137, § 308, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1662. Transfer of resident from one facility to another.

(a) The Director of a facility may recommend to the Court that a resident committed to the facility be transferred to another facility if the Director determines that it would be beneficial and consistent with the habilitation needs of the resident to do so. Notice of the recommendation shall be served on the resident, the resident's counsel, the resident's parent or guardian who petitioned for the commitment and the resident's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the resident or his or her parent or guardian requests a hearing by petitioning the Court in writing within ten (10) days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the resident to his or her family, guardian or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) A resident admitted to a facility can be transferred to another facility if the resident consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of a resident to a health care facility without prior Court approval in an emergency situation when the life of the resident is in danger. In such circumstances, consent of the resident, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the resident cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Director of the facility, with notice promptly given to the parent or guardian. (Mar. 3, 1979, D.C. Law 2-137, § 309, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.
Section referred to in section. 6-1683.

§ 6-1663. Discharge from residential care.

The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Chief Program Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. If the resident, the resident's parent or guardian, the resident's counsel, or the mental retardation advocate objects to the discharge, he or she may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. The resident shall not be discharged prior to the hearing. (Mar. 3, 1979, D.C. Law 2-137, § 310, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1664. Inability to pay for habilitation.

No mentally retarded person who resides in the District shall be denied habilitation in facilities or from community-based services owned or operated by, or under contract with, the District because of inability to pay for such habilitation. (Mar. 3, 1979, D.C. Law 2-137, § 311, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1665. Court hearing required prior to commitment.

No mentally retarded person shall be committed to a facility under this chapter prior to the Court hearing required under this subchapter. (Mar. 3, 1979, D.C. Law 2-137, § 312, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1666. Effect of determination of incompetency to refuse commitment.

A determination by the Court under this subchapter that an individual fourteen (14) years of age or older is incompetent to refuse commitment shall not be relevant to a determination of the individual's competency with respect to other matters not considered by the Court. (Mar. 3, 1979, D.C. Law 2-137, § 313, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1667. Rules and regulations governing respite care.

(a) The Department of Human Resources shall promulgate rules and regulations governing the provision of respite care for mentally retarded persons. These shall provide that periods of respite care shall not exceed forty-two (42) days in a twelve (12) month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter.

(b) Should any person be detained for respite care for a period exceeding forty-two (42) days in a twelve (12) month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV, he or she shall be promptly discharged. (Mar. 3, 1979, D.C. Law 2-137, § 314, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

*Subchapter IV.—Hearing and Review Procedures***§ 6-1668. Commencement of commitment proceedings — Filing of written petition.**

Proceedings for the commitment of an individual pursuant to subchapter III of this chapter shall be commenced by the filing of a written petition with the Court in the manner and form prescribed by the Court. The petition may be filed by a parent or guardian with respect to an individual who is or is believed to be mentally retarded. If filed by the parent or guardian, a copy of the petition shall be served on the respondent and on his or her counsel, retained or appointed pursuant to section 6-1669. (Mar. 3, 1979, D.C. Law 2-137, § 401, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in section. 6-1670.

§ 6-1669. Representation by counsel.

Individuals whose admission to a facility under section 6-1655 has been questioned on grounds of their competency or the voluntariness of the admission, have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with section 6-1655(c), and they shall be informed by the Court of this right. Respondents shall be represented by counsel in any proceeding before the Court, and shall be so informed by the Court. If an individual whose admission is questioned requests the appointment of counsel or if a respondent fails or refuses to obtain counsel, the Court shall appoint counsel to represent the individual or respondent. Whenever possible, counsel shall be appointed who has had experience in the mental retardation area. Counsel appointed to represent respondents, and counsel appointed to represent individuals whose admission has been questioned but who are unable to pay for such counsel, shall be awarded compensation by the Court for his or her services in an amount determined by the Court to be fair and reasonable. (Mar. 3, 1979, D.C. Law 2-137, § 402, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in section. 6-1668.

§ 6-1670. Comprehensive evaluation report and individual habilitation plan required — Contents — Copies.

(a) If a petition filed in accordance with section 6-1668 is not accompanied by a comprehensive evaluation report based on an evaluation which has been performed within six (6) months prior to the hearing and an individual habilitation plan which has been prepared within thirty (30) days of the filing of the petition, the Court shall immediately order that a comprehensive evaluation be conducted and an individual habilitation plan be written.

(b) A written report setting forth the results of the comprehensive evaluation and a copy of the habilitation plan shall be submitted to the Court. The report shall indicate:

- (1) whether or to what degree the individual or respondent is mentally retarded;
- (2) what habilitation is needed; and
- (3) the record of habilitation and care, if any.

(c) The individual habilitation plan shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person's parent or guardian who petitioned for the commitment. In cases where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the Court shall designate other appropriate and professionally qualified persons to develop the plan. The plan shall contain the following:

(1) a statement of the nature of the specific strengths, limitations and specific needs of the person who is the subject of the plan;

(2) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(3) a statement of, and an explanation for, the plan of habilitation designed to achieve these intermediate and long-range goals;

(4) a statement of the objective criteria, and an evaluation procedure and schedule for determining whether the goals are being achieved;

(5) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals; and

(6) criteria for release to less restrictive settings for habilitation and living, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.

(d) A copy of the report and the plan shall be provided to the individual or respondent and his or her counsel, and to the parent or guardian if the petition was filed under section 6-1657 or section 6-1659, at least ten (10) days prior to the hearing. If the petition was accompanied by a comprehensive evaluation and plan, copies of the report and plan shall be provided to the respondent and his or her counsel within three (3) days of the filing of the petition. (Mar. 3, 1979, D.C. Law 2-137, § 403, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in sections. 6-1657, 6-1659, 6-1684.

§ 6-1671. Payment for independent comprehensive evaluation and habilitation plan.

Respondents and their counsel shall be informed by the Court of the right to have an independent comprehensive evaluation and habilitation plan developed and, if unable to pay for it, as proved to the satisfaction of the Court, to have such evaluation conducted and plan developed at the expense of the District. (Mar. 3, 1979, D.C. Law 2-137, § 404, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1672. Hearing conducted promptly.

The hearing in commitment proceedings shall be conducted promptly after filing of the petition. (Mar. 3, 1979, D.C. Law 2-137, § 405, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1673. Hearings conducted in informal manner — Procedural rights at hearing.

Hearings shall be conducted in as informal a manner as may be consistent with orderly procedure. Individuals whose admission has been questioned or respondents have the right to be present during hearings and to testify, but shall not be compelled to testify, and shall be so

advised by the Court. They shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. The presence of the respondent may be waived only if the Court finds that the respondent has knowingly and voluntarily waived his or her right to be present, or if the Court determines that the respondent is unable to be present by virtue of his or her physically handicapping condition. (Mar. 3, 1979, D.C. Law 2-137, § 406, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1674. Standard of proof.

If the petition was filed pursuant to section 6-1657, the parent or guardian, or his or her counsel if so represented, shall present evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment. (Mar. 3, 1979, D.C. Law 2-137, § 407, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1675. Hearings closed to public — Request for open hearing.

Hearings shall be closed to the public unless the mentally retarded person, or his or her counsel, requests that a hearing be open to the public. (Mar. 3, 1979, D.C. Law 2-137, § 408, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1676. Disposition orders by Court.

(a) Upon completion of the hearing, the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

- (1) the respondent is not at least moderately mentally retarded; or
- (2) a respondent fourteen (14) years of age or older is competent to refuse commitment.

(b) Only if the Court determines that the conditions set forth in section 6-1657 and section 6-1659 are satisfied shall it order commitment to a facility, consistent with the comprehensive evaluation and individual habilitation plan of the mentally retarded person.

(c) If the Court determines that a respondent should not be committed to a facility, the Court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate and necessary, or it may order no habilitation and care.

(d) For persons whose admission to facilities has been questioned under section 6-1655, the Court shall enter an appropriate order as set forth under that section. (Mar 3, 1979, D.C. Law 2-137, § 409, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1677. Appeal of commitment order.

Any commitment order of the Court may be appealed in a like manner as other civil actions. (Mar. 3, 1979, D.C. Law 2-137, § 410, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1678. Periodic review of commitment order.

(a) Any decision of the Court ordering commitment of a mentally retarded person to a facility shall be reviewed in a Court hearing every six (6) months for two (2) years, and once a year thereafter. The mentally retarded individual shall be discharged unless there is a finding of the following:

(1) the Court determines that the mentally retarded individual has benefited from the habilitation; and

(2) the facility, its sponsoring agency or the Department of Human Resources demonstrates that continued residential habilitation is necessary for the habilitation program.

(b) If a mentally retarded individual is discharged in accordance with the provisions of subsection (a)(1) above but continues to evidence the need for habilitation and care, it shall be the responsibility of the Department of Human Resources to arrange for suitable services for the person. (Mar. 3, 1979, D.C. Law 2-137, § 411, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1679. Payment of costs and expenses.

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

(a) to expert witnesses designated by the Court, an amount determined by the Court;

(b) to attorneys appointed under this chapter, fees as authorized under the Criminal Justice Act (D.C. Code, sec. 11-2601 et seq.);

(c) to other witnesses, the same fees and mileage as for attendance at Court to be paid upon the approval of the Court.

(Mar. 3, 1979, D.C. Law 2-137, § 412, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1680. Mental retardation advocate.

(a) Mentally retarded persons who admit themselves to a facility under section 6-1655, and mentally retarded persons whose commitment is sought under section 6-1657 or section 6-1659, shall have the assistance of a mental retardation advocate in every proceeding and at each stage in such proceedings under this chapter.

(b) Upon receipt of the petition for commitment or notification of admission as provided in section 6-1655, section 6-1657 and section 6-1659, the Court shall appoint a qualified mental retardation advocate selected from a list of such advocates it maintains.

(c) Mental retardation advocates shall have the following powers and duties:

(1) to inform persons subject to the procedures set forth in this chapter of their rights;

(2) to consult with the person, his or her family and others concerned with his or her habilitation and well being;

(3) to ensure by all means, including case referral to legal services, agencies and other practicing lawyers, that the person is afforded all rights under the law; and

(4) to guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

(d) The mental retardation advocate shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to, comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

(e) The mental retardation advocate shall have access to all records, reports and documents affecting his or her client.

(f) The mental retardation advocate shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice: Provided, that he or she shows reasonable cause for visiting at times other than visiting hours.

(g) The mental retardation advocate shall be a person with training and experience in the field of mental retardation.

(h) Advocates shall be provided directly by the Court or by a contract with individuals or organizations including local associations for consumers of mental retardation services;

however, the Court shall ensure that contracts and other arrangements for selection and provision of advocates provide that each mental retardation advocate shall be independent of any public or private agency which provides services to persons subject to this chapter.

(i) In the selection, training and development of the advocacy provision of this section, the Court shall explore and seek out potential sources of funding at the federal and District levels.

(j) Advocates shall be provided with facilities, supplies, and secretarial and other support services sufficient to enable them to carry out their duties under this chapter.

(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

(l) The Court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

(m) Mentally retarded persons subject to this chapter may knowingly reject the services of a mental retardation advocate and shall be so advised by the Court. Advocates whose services have been rejected by the mentally retarded person shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section. (Mar. 3, 1979, D.C. Law 2-137, § 413, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Section referred to in section. 6-1652.

Subchapter V.—Rights of Mentally Retarded Persons

§ 6-1681. Habilitation and care — Habilitation program.

(a) All mentally retarded persons have a right to habilitation and care suited to their needs, regardless of age, degree of retardation or handicapping condition.

(b) Each resident has a right to a habilitation program which will maximize his or her human abilities, enhance his or her ability to cope with his or her environment and create a reasonable opportunity for progress toward the goal of independent community living. (Mar. 3, 1979, D.C. Law 2-137, § 501, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1682. Living conditions — Teaching of skills.

Residents shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Residents shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living. (Mar. 3, 1979, D.C. Law 2-137, § 502, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1683. Least restrictive conditions.

Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution or residential facility shall move residents from (a) more to less structured living; (b) larger to smaller facilities; (c) larger to smaller living units; (d) group to individual residence; (e) segregated to intergrated community living; or (f) dependent to independent living. If at any time, the Director decides that a resident should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to section 6-1662. Notice shall be provided to the resident, the resident's counsel, the resident's mental retardation advocate, if one has been appointed, and the resident's parent or guardian who petitioned for the commitment. (Mar. 3, 1979, D.C. Law 2-137, § 503, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1684. Comprehensive evaluation and individual habilitation plan.

(a) All residents committed pursuant to this chapter shall have received prior to their commitment pursuant to section 6-1670, and annually thereafter, a comprehensive evaluation and an individual habilitation plan. Residents admitted to a facility shall have, within ten (10) days of their admission, and annually thereafter, a comprehensive evaluation and an individual habilitation plan.

(b) Within ten (10) days of admission or commitment, professionals or staff members responsible for implementing or overseeing the implementation of the resident's individual habilitation plan shall be designated by the facility, its sponsoring agency, or the Department of Human Resources. Each District or other agency or service responsible for providing the habilitation indicated by the plan shall also be designated within ten (10) days, and implementation of the plan shall begin within ten (10) days. The plan shall specify the role and objectives with respect to the plan of all such agencies or services.

(c) All residents shall receive habilitation and care consistent with the habilitation plan. The Department of Human Resources shall set standards for habilitation and care provided to such residents, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and other Developmentally Disabled Persons, including staff-resident and professional-resident ratios. In the interests of continuity of care, one qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the resident should be released to a less restrictive setting and for continually reviewing the plan. (Mar. 3, 1979, D.C. Law 2-137, § 504, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1685. Visitors — Mail — Access to telephones — Religious practice — Personal possessions — Privacy — Exercise — Diet — Medical attention — Medication.

(a) Subject to restrictions by a physician for good cause, each resident has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the resident and his or her visitors. Notwithstanding the above, each resident has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the resident's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident shall have the right to send and receive sealed and uncensored mail. The resident has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communication are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A resident who is unable to pay shall be furnished such writing, postage and telephone facilities without charge.

(c) Each resident shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and/or transportation to nearby religious services. Residents who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each resident shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept

of each resident's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each resident shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each resident has the right to a nourishing, well-balanced, varied and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each resident shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within twenty-four (24) hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each resident under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed thirty (30) days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the resident's habilitation program. (Mar. 3, 1979, D.C. Law 2-137, § 505, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1686. Prohibited psychological therapies.

No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving aversive stimuli or deprivation of rights set forth in this subchapter shall be administered to any resident. (Mar. 3, 1979, D.C. Law 2-137, § 506, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1687. Essential surgery in medical emergency.

If, in a medical emergency, it is the judgment of one licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery would create a grave danger to the health of the resident, essential surgery may be administered without the consent of the resident if the necessary information is provided to the resident's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be performed upon the authorization of the chief medical officer of the facility. (Mar. 3, 1979, D.C. Law 2-137, § 507, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1688. Sterilization.

No resident of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility. (Mar. 3, 1979, D.C. Law 2-137, § 508, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1689. Experimental research.

Residents shall have a right not to be subjected to experimental research without the express and informed consent of the resident, or if the resident cannot give informed consent, of the resident's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department of Human Resources before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health, Education and Welfare for projects supported by that agency. (Mar. 3, 1979, D.C. Law 2-137, § 509, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1690. Mistreatment, neglect or abuse prohibited — Use of restraints — Seclusion — “Time-out” procedures.

(a) Mistreatment, neglect or abuse in any form of any resident shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a resident from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the resident's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining (1) the use of restraints, (2) the professionals who may authorize such use, and (3) the mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over twelve (12) hours. A resident placed in restraint shall be checked at least every thirty (30) minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the resident. Opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraint is employed.

(d) Seclusion, defined as a placement of a resident alone in a locked room, shall not be employed. Legitimate “time-out” procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding “time-out” procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any resident shall be reported immediately to the Director and the Director shall inform the resident's counsel, parent or guardian who petitioned for the commitment and the resident's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect or abuse shall not be subjected to adverse action by the facility because of the report.

(f) A resident's counsel, parent or guardian who petitioned for commitment and a resident's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs. (Mar. 3, 1979, D.C. Law 2-137, § 510, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1691. Performance of labor.

(a) No resident shall be compelled to perform labor which involves the operation, support or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of residents who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A resident may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the resident's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A resident may be required to perform tasks of a housekeeping nature for his or her own person only. (Mar. 3, 1979, D.C. Law 2-137, § 511, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1692. Maintenance of records — Information considered privileged and confidential — Access — Contents.

Complete records for each resident shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular resident and to the Department of Human Resources without divulging the identity of the resident. All information contained in a resident's records shall be considered privileged and confidential. The resident's parent or guardian who petitioned for the commitment, the resident's counsel, the resident's mental retardation advocate and any person properly authorized in writing by the resident, if such resident is capable of giving such authorization, shall be permitted access to the resident's records. These records shall include:

- (1) identification data, including the resident's legal status;
- (2) the resident's history, including but not limited to:
 - (A) family data, educational background and employment record;
 - (B) prior medical history, both physical and mental, including prior institutionalization;
- (3) the resident's grievances, if any;
- (4) an inventory of the resident's life skills;
- (5) a record of each physical examination which describes the results of the examination;
- (6) a copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the resident's program;
- (7) the findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;
- (8) a medication history and status;
- (9) a summary of each significant contact by a professional person with a resident;
- (10) a summary of the resident's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to section 6-1684 (c) to supervise the resident's habilitation;
- (11) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;
- (12) a signed order by a professional person, as set forth in section 6-1690 (b), for any physical restraints;
- (13) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

- (14) a summary of family visits and contacts;
 - (15) a summary of attendance and leaves from the facility; and
 - (16) a record of any seizures, illnesses, treatments thereof, and immunizations.
- (Mar. 3, 1979, D.C. Law 2-137, § 512, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1693. Initiation of action to compel rights — Civil remedy — Sovereign immunity barred — Defense to action — Payment of expenses.

(a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded mentally retarded persons under this chapter.

(b) Any resident shall have the right to a civil remedy in an amount not less than twenty-five dollars (\$25) per day from the Director or the District of Columbia, separately or jointly, for each day in which said resident at a facility is not provided a program adequate for habilitation and normalization pursuant to the resident's individual habilitation plan.

(c) Sovereign immunity shall not bar an action under this section.

(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the resident within five (5) days of a Court's decision that the program is inappropriate.

(e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section. (Mar. 3, 1979, D.C. Law 2-137, § 513, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1694. Deprivation of civil rights — Public or private employment — Retention of rights — Liability — Immunity — Exceptions.

(a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for mental retardation.

(b) Any person who has been admitted or committed to a facility under the provisions of this chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance. (Mar. 3, 1979, D.C. Law 2-137, § 514, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

Subchapter VI.—Miscellaneous Provisions; Effective Date

§ 6-1695. Increased financial responsibility.

The responsible party must be provided with notice and a reasonable opportunity for a hearing before increased financial responsibility, resulting from a change in the Court's commitment order, may be charged for the support of a mentally retarded person. (Mar. 3, 1979, D.C. Law 2-137, § 601, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1696. Separability.

Should any provision of this chapter be declared to be unconstitutional or beyond the statutory authority of the Council, the remaining provisions of this chapter shall remain in effect. (Mar. 3, 1979, D.C. Law 2-137, § 602, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1697. Appropriations.

There is hereby authorized to be appropriated such District funds as may be necessary to implement the provisions of this chapter, including funds for the development, and the support, of community-based services for mentally retarded persons. (Mar. 3, 1979, D.C. Law 2-137, § 603, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1698. Authority of Board of Education unchanged.

Nothing herein shall be construed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to title 31 of the District of Columbia Code and applicable federal laws and regulations. (Mar. 3, 1979, D.C. Law 2-137, § 605, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

§ 6-1699. Effective date.

This chapter shall take effect pursuant to the provisions of section 1-147 (c) (1). With respect to persons who are residents in facilities on the effective date of this chapter, the provisions of the chapter will take effect immediately, with the exception of the admission and commitment hearing procedures established in subchapters III and IV. The Court shall begin hearings under subchapters III and IV to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such persons, as soon as possible, but not later than one hundred eighty (180) days after the effective date of this chapter. All Court hearings to review the admission or commitment of persons residing in facilities on the effective date of this chapter shall be completed within three (3) years of the effective date of this chapter. (Mar. 3, 1979, D.C. Law 2-137, § 696, 25 DCR 5094.)

Legislative History of Law 2-137. See note to § 6-1651.

CHAPTER 17.—PROGRAMS FOR THE AGING

Subchapter II.—Office on Aging

Sec.

6-1712. Executive Director — Staffing of Office.

Subchapter II.—Office on Aging

§ 6-1711. Establishment of Office.

Section referred to in section. 1-333.1.

§ 6-1712. Executive Director — Staffing of Office.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia, from a list of not more than three names submitted to him by the Commission. The Director shall devote his full time to the duties of his office. His annual compensation shall be fixed in accordance with chapter 51 of Title 5, U.S. Code (relating to the classification of government employees and related matters), but shall be not less than a GS-15, step one or the equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1. He shall have such staff as is approved in the current District government budget and Federal grants, plus any temporary staff approved by the Office of Budget and Management Systems. (Oct. 29, 1975, D.C. Law 1-24, title III, § 302, 22 DCR 2457; Mar. 3, 1979, D.C. Law 2-139, § 3205 (t), 25 DCR 5740.)

Effect of Amendment.
1979—Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding “or the equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1” to the end of the third sentence.

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 18.—FIREARMS CONTROL

Subchapter I.—General Provisions

- Sec.
- 6-1802. Definitions.
- Subchapter II.—Firearms and Destructive Devices
- 6-1812. Registration of certain firearms prohibited.
- 6-1813. Qualifications for registration — Information required for registration.
- 6-1814. Fingerprints and photographs of applicants — Application in person required.
- 6-1816. Time for filing registration applications.
- 6-1817. Issuance of registration certificate — Time period — Corrections.
- 6-1820. Procedure for denial and revocation of registration certificate.
- 6-1821. Certain information not to be used as evidence in criminal proceedings.
- Subchapter III.—Estates Containing Firearms
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Subchapter IV.—Licensing of Firearms Businesses

- Sec.
- 6-1846. Procedure for denial and revocation of dealer’s license.
- 6-1849. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

Subchapter V.—Sale and Transfer of Firearms, Destructive Devices, and Ammunition

- 6-1851. Sales and transfers prohibited.
- 6-1852. Permissible sales and transfers.

Subchapter VI.—Possession of Ammunition

- 6-1861. Persons permitted to possess ammunition.

Subchapter VII.—Miscellaneous

- 6-1878. Construction.

Subchapter I.—General Provisions

§ 6-1801. Findings and purpose.

NOTES TO DECISIONS

Firearms control law valid. — The validity of this chapter can be sustained under the District of Columbia Council’s newly conferred power set forth in § 1-144 (a) of the home rule statute notwithstanding the limitation contained in § 1-147 (a) (9), which is merely a time constraint on the Council’s authority to make changes, modifications or amendments in local criminal statutes until such time as a local law revision commission could make a complete reevaluation and revision of the District’s Criminal Code. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

The Firearms Control Regulations Act (§ 6-1801 et seq.) constitutes a legitimate exercise of the authority vested in

the District of Columbia Council by § 1-227. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

And does not conflict with Title 22. — No direct and positive conflict is apparent between the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) and Chapter 32 of Title 22, which regulates weapons. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

This chapter is not unconstitutionally vague. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Exercise of police power. — The Firearms Control Regulations Act constitutes an exercise of the police power of the Council of the District of Columbia. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

Purpose of chapter. — Enacted as a comprehensive regulatory scheme for control of the use and sale of firearms in the District of Columbia, the purpose of this chapter is to freeze the handgun population within the District by expanding and strengthening preexisting firearm registration standards and to prescribe minor criminal penalties for the violation of its provisions. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

In passing the Firearms Control Regulations Act of 1975, the Council acknowledged that possession of some firearms by citizens is legitimate, but its overriding concern was to limit and control such possession. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

Nature of chapter. — This chapter sanctions the ownership of certain limited types of firearms subject to

strict registration and transfer provisions. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

Act repeals not Code sections but regulations. — Section 708 of the Firearms Control Regulations Act of 1975 (set out as a note under this section in the 1978 Supplement) makes explicit the Council's intention to repeal not part of Title 22 of the District of Columbia Code, but rather those police regulations which have historically established the gun control framework for this jurisdiction. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Logan v. United States* (D.C. 1979, 402 A.2d 822).

§ 6-1802. Definitions.

As used in this chapter the term—

* * * * *

(3) “Antique firearm” means—

* * * * *

- (B) any replica of any firearm described in subparagraph (A) if such replica—
- (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

* * * * *

(15) “Sawed-off shotgun” means a shotgun having a barrel of less than 20 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 20 inches in length.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking “(1)” in paragraph (B) of subsection (3) and inserting “(A)” in lieu thereof and by striking “18” throughout subsection (15) and inserting “20” in lieu thereof.

Legislative History of Law 2-62. Law 2-62 was introduced in Council and assigned Bill No. 2-194, which

was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-129 and transmitted to both Houses of Congress for its review.

NOTES TO DECISIONS

Intent of subsection (10). — The Council, in adopting subsection (10) of this section, was concerned primarily with the inherent fire power of certain weapons, not with the question of firearm modification after registration. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

The nature of the weapons, plus the administration of the program, not the character of the weapon's owner,

prompted the Council to adopt subsection (10) of this section. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subchapter II.—Firearms and Destructive Devices

§ 6-1811. Registration requirements.

NOTES TO DECISIONS

“When” in subsection (b) (1) of this section is the semantic equivalent of “if,” and does not imply that the authority of the named personnel to possess an unregistered firearm exists only during their time on duty. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

Registration held by employer imputed to employee. — When a person is issued a firearm by an employer which holds a registration certificate for that firearm under subsection (a) of this section, and is required by law or regulation to possess the issued firearm while off duty, the registration held by the employer will be imputed to the employee for the purposes of § 6-1861 (c). *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

Security services allowed. — Subsection (a) specifically allows an organization providing armed and unarmed security services to clients to furnish properly registered firearms to special police officers during duty hours and allows the commissioned special police officers of such an

organization to maintain their firearms in a loaded usable condition during duty hours. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Special police officers and others who are issued firearms by their employers cannot register their weapons; they nevertheless are entitled to carry them and ammunition for them. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

And recreational activities. — The District of Columbia Council intended that both residents and nonresidents of the District be allowed to participate in recreational activities within the meaning of subsection (b) (3) so long as their firearms are validly registered in their respective jurisdictions and meet local safety criteria. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *United States v. Dixon* (1978, 446 F. Supp. 58).

§ 6-1812. Registration of certain firearms prohibited.

No registration certificate shall be issued for any of the following types of firearms:

* * * * *

(d) Pistol not validly registered to the current registrant in the District prior to September 24, 1976: Provided, that the provisions of this subsection shall not apply to any organization which has in its employ one (1) or more commissioned special police officers or other employees licensed to carry firearms, and which arms such employees with firearms during such employees’ duty hours.

(e) Repealed. Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.
(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by adding the proviso at the end of subsection (d) and by striking subsection (e).

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

This section did not violate the equal protection clause. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1813. Qualifications for registration — Information required for registration.

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

* * * * *

(6) Within the five years immediately preceding the application, has not been voluntarily or involuntarily committed to any mental hospital or institution: Provided, that this paragraph shall not apply, if such person shall present to the Chief with the applicant a medical certification that the applicant has recovered from whatever malady prompted such commitment;

* * * * *

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief: Provided, that once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearms: Provided, further, that this paragraph shall not apply with respect to any firearm re-registered pursuant to section 6-1816; and

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia: Provided, that current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and, provided further, that this determination shall not be made with respect to persons applying to re-register any firearm pursuant to section 6-1816.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking “voluntary” in paragraph (6) of subsection (a) and inserting “voluntarily” in lieu thereof, by striking the phrase “for the same type of firearm; and” in paragraph (10) of subsection (a) and inserting the phrase “for the same type of firearms: Provided, further, that this paragraph shall not apply with respect to any firearm

re-registered pursuant to section 6-1816; and” and by changing the proviso in paragraph (11) of subsection (a) to read “Provided further, that this determination shall not be made with respect to persons applying to re-register any firearm pursuant to section 6-1816.”
Legislative History of Law 2-62. See note to § 6-1802.
Section referred to in section. 6-1814.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1814. Fingerprints and photographs of applicants — Application in person required.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in section 6-1813 and to effectuate the purpose of this chapter: Provided, that any person who has been fingerprinted by the Chief within five years prior to submitting the application need not, in the Chief's discretion, be fingerprinted again if he offers other satisfactory proof of identity.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking “section 6-1813 (a)” in subsection (a) and inserting in lieu thereof “section 6-1813.”

Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1816. Time for filing registration applications.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with

the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: Provided, that such person files an application for a registration certificate within 48 hours after such communication.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking the “s” at the end of the word “certificates” in subsection (a).

Legislative History of Law 2-62. See note to § 6-1802.
Section referred to in section. 6-1813.

NOTES TO DECISIONS

This section did not violate the equal protection clause. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

Section does not impermissibly burden interstate commerce. — The phrase “brought into the District” in the second sentence of subsection (a) does not refer to firearms packaged in their original shipping containers that are transported in interstate commerce in a bona fide shipment; thus this chapter does not totally exclude lawful articles of interstate commerce. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

To the extent that the statute requires that a shipper of firearms obtain a local dealer’s license if he remains in the

District for a time period longer than a mere brief stop en route to another jurisdiction, the burden on interstate commerce is slight and not unreasonable since the interest served is a legitimate local concern. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Purpose of section. — This section is designed to require those obtaining firearms in the District of Columbia or nonresidents who move into the District with registerable firearms to register them promptly. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1817. Issuance of registration certificate — Time period — Corrections.

(a) Upon receipt of a properly executed application for registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this chapter, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

* * * * *

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization named thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by capitalizing “upon” in subsection (a) and by striking “names” in the second sentence of subsection (c) and inserting “named” in lieu thereof.

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

Time period set out in this section is advisory rather than mandatory. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

And no penalty or consequence is specified for failing to act within the time period designated in this section. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

§ 6-1820. Procedure for denial and revocation of registration certificate.

* * * * *

(c) Within seven days of a decision unfavorable to the applicant or registrant becoming final, the applicants or registrant shall (1) peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in section 6-1875, or (2) lawfully remove such firearm from the District for so long as he has an interest in such firearm, or, (3) otherwise lawfully dispose of his interest in such firearm.

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by replacing the reference to section 6-1874 in subsection (c) with a reference to section 6-1875.

Legislative History of Law 2-62. See note to § 6-1802. Section referred to in section. 6-1851.

NOTES TO DECISIONS

This section is an exercise of legislative police power and not of eminent domain. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

And compensation is not required. — This section constitutes a proper exercise of police power to prevent a perceived public harm, which does not require compensation under the Fifth Amendment. *Fesjian v. Jefferson* (D.C. 1979, 399 A.2d 861).

Contested case procedures apply. — Subsection (b) and § 6-1846(b) refer to the Court of Appeal's direct review jurisdiction under the Administrative Procedure Act (§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of "contested case" procedures. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1821. Certain information not to be used as evidence in criminal proceedings.

No information obtained from a person under this subchapter or retained by a person in order to comply with any section of this subchapter, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this chapter, occurring prior to or concurrently with the filing of the information required by this subchapter: Provided, that this section shall not apply to any violation of section 22-2501, or section 6-1874. (Sept. 24, 1976, D.C. Law 1-85, title II, § 211, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by replacing reference to section 6-1873 with reference to section 6-1874.

Legislative History of Law 2-62. See note to § 6-1802.

Subchapter III.—Estates Containing Firearms

§ 6-1831. Rights and responsibilities of executors and administrators.

* * * * *

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate, the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this chapter upon the decedent, if the decedent were still alive: Provided, that such executor or administrator shall not be liable to the criminal penalties of section 6-1876.

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by replacing reference to section 6-1875 in subsection (b) with reference to section 6-1876.

Legislative History of Law 2-62. See note to § 6-1802.

Subchapter IV.—Licensing of Firearms Businesses

§ 6-1846. Procedure for denial and revocation of dealer’s license.

* * * * *

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer’s license, the licensee or applicant shall—

* * * * *

(2) peaceably surrender to the Chief any firearms in his inventory which he does not register, and all destructive devices in his inventory in the manner provided for in section 6-1875;

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by correcting reference to section 6-1875 in subsection (c).

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

Contested case procedures apply. — Section 6-1820(b) and subsection (b) of this section refer to the Court of Appeal’s direct review jurisdiction under the Administrative Procedure Act (§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of “contested case” procedures. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1849. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

No information obtained from or retained by a licensed dealer to comply with this subchapter shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this chapter occurring prior to or concurrently with the filing of such information: Provided, that this section shall not apply to any violation of section 22-2501, or of section 6-1874. (Sept. 24, 1976, D.C. Law 1-85, title IV, § 409, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by replacing the reference to section 6-1873 with a reference to section 6-1874.

Legislative History of Law 2-62. See note to § 6-1802.

*Subchapter V.—Sale and Transfer of Firearms,
Destructive Devices, and Ammunition*

§ 6-1851. Sales and transfers prohibited.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in sections 6-1820(c), 6-1852, or 6-1875. (Sept. 24, 1976, D.C. Law 1-85, title V, § 501, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by inserting 6-1820 (c) before 6-1852, by inserting a comma after 6-1852 and by correcting the reference to section 6-1875.

Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1852. Permissible sales and transfers.

* * * * *

(d) Except as provided in subsections (b) and (e), no licensed dealer shall sell or otherwise transfer ammunition unless—

(1) the sale or transfer is made in person; and

(2) the purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) the ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) the purchaser signs a receipt for the ammunition which (in addition to the other records required under this chapter) shall be maintained by the licensed dealer for a period of one year from the date of sale.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking “(f)” after the word “and” in subsection (d) and inserting “(e)” in lieu thereof.

Legislative History of Law 2-62. See note to § 6-1802.
Section referred to in section. 6-1851.

NOTES TO DECISIONS

Police equipment company sales regulated but not prohibited. — Under this chapter a police equipment company would not be prohibited from selling handguns to qualified residents, but such sales would be subject to the

Council’s authority to regulate the conduct of the dealers of any dangerous or deadly weapons and to the standards set forth in this section. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Subchapter VI.—Possession of Ammunition**§ 6-1861. Persons permitted to possess ammunition.**

No person shall possess ammunition in the District of Columbia unless:

(a) He is a licensed dealer pursuant to subchapter IV;

(b) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(c) He is the holder of the valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses; or

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by striking the period at the end of subsections (a), (b), and (c) and inserting a semicolon in lieu thereof and by

inserting the word “or” after the semicolon at the end of subsection (c).

Legislative History of Law 2-62. See note to § 6-1802.

NOTES TO DECISIONS

Law enforcement personnel. — This section allows authorized law enforcement personnel to carry ammunition while on duty. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

Registration held by employer imputed to employee. — When a person is issued a firearm by an employer which

holds a registration certificate for that firearm under § 6-1811 (a), and is required by law or regulation to possess the issued firearm while off duty, the registration held by the employer will be imputed to the employee for the purposes of subsection (c) of this section. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

*Subchapter VII.—Miscellaneous***§ 6-1872. Firearms required to be unloaded and disassembled or locked.**

NOTES TO DECISIONS

Home-business distinction not violative of equal protection. — Since there was a clear rational basis for distinguishing between a home and a business establishment in the firearms control statute, the classification in this section which allows individuals to

maintain an assembled firearm at their places of business but not at home relates to the purpose for which it was made and lacks the kind of discrimination from which the equal protection clause affords protection. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

§ 6-1874. False information — Forgery or alternation.

Section referred to in sections. 6-1821, 6-1849.

§ 6-1875. Voluntary surrender of firearms, destructive devices, or ammunition — Immunity from prosecution — Determination of evidentiary value of firearm.

Section referred to in sections. 6-1846, 6-1851.

§ 6-1876. Penalties.

Section referred to in sections. 6-1831, 6-1878.

NOTES TO DECISIONS

Knowledge of duty to register firearms is not required for conviction of failure to register. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

§ 6-1878. Construction.

Nothing in this chapter shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any federal law. This chapter and the penalties prescribed in section 6-1876, for violations of this chapter, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated. (Sept. 24, 1976, D.C. Law 1-85, title VII, § 709, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-62, amended section by correcting the reference to section 6-1876.

Legislative History of Law 2-62. See note to § 6-1802.

§ 6-1879. Applicability of District of Columbia Administrative Procedure Act.

NOTES TO DECISIONS

Administrative Procedure Act applies without exception. — Nowhere in this chapter is it specifically provided that the Administrative Procedure Act (§ 1-1501 et seq.) shall not apply. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

CHAPTER 19.—LATINO COMMUNITY DEVELOPMENT

Subchapter II. — Office on Latino Affairs

Sec.

6-1912. Appointment of Executive Director —
Compensation — Staff.

Subchapter II.—Office on Latino Affairs

§ 6-1911. Establishment of Office.

Section referred to in section. 1-333.1.

§ 6-1912. Appointment of Executive Director — Compensation — Staff.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor from a list of three or more names submitted to him or her by the Commission. The Director shall devote his or her full time to the duties of the Office. His or her annual compensation shall be fixed in accordance with chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be not lower than a GS 15, step one or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1. He or she shall have such staff as is approved in the District of Columbia budget and Federal or private grants, plus any temporary staff approved by the Office of Budget and Management Systems. (Sept. 29, 1976, D.C. Law 1-86, title III, § 302, 23 DCR 2543; Mar. 3, 1979, D.C. Law 2-139, § 3205 (u), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding “or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1” to the end of the third sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 20. — YOUTH SERVICES

Sec.

6-2004. Office of Youth Advocacy.

6-2006. Transfer of positions and funds.

§ 6-2004. Office of Youth Advocacy.

* * * * *

(c) The following positions and their associated funding are hereby authorized to be transferred from the Office of Youth Opportunity Services to the Office of Youth Advocacy:

- 1 Special Assistant to the Mayor
(Subject to the prior approval of the
Civil Service Commission pursuant
to 5 U.S.C. § 5108.)

GS-16

| | |
|------------------------------|-------|
| 1 Program Analyst Officer | GS-13 |
| 1 Education Specialist | GS-12 |
| 1 Research Assistant | GS-11 |
| 1 Program Director | GS-11 |
| 2 Field Technical Assistants | GS-9 |
| 1 Computer Program Analyst | GS-11 |
| 2 Program Analysts | GS-9 |
| 1 Secretary | GS-7 |

* * * * *

(As amended Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

Effect of Amendment.
1978 — Act Apr. 28, 1978, D.C. Law 2-75, amended section by replacing the last eleven lines in subsection (c) with present last twelve lines.

Legislative History of Law 2-75. Law 2-75 was introduced in Council and assigned Bill No. 2-119, which

was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and second readings on January 24, 1978 and February 7, 1978, respectively. Signed by the Mayor on February 24, 1978, it was assigned Act No. 2-153 and transmitted to both Houses of Congress for its review.

§ 6-2006. Transfer of positions and funds.

(a) The following positions and their associated funding are hereby transferred from the Office of Youth Opportunity Services to the Department of Manpower:

| | |
|----------------------------|-------|
| 1 Deputy Director | GS-15 |
| 1 Manpower Specialist | GS-14 |
| 1 Computer Systems Analyst | GS-13 |
| 1 Program Analyst Officer | GS-12 |
| 1 Research Assistant | GS-9 |
| 1 Research Assistant | GS-7 |
| 3 Clerks | GS-4 |

(b) The following positions and their associated funding, initially transferred in the “Budget Act of 1977” to the Department of Manpower, are hereby transferred from the Office of Youth Opportunity Services to the Department of Recreation for the support of Neighborhood Planning Council programs:

| | |
|------------------------------|-------|
| 1 Recreation Specialist | GS-14 |
| 1 Program Analyst Officer | GS-12 |
| 1 Social Science Analyst | GS-11 |
| 2 Field Technical Assistants | GS-9 |
| 1 Secretary | GS-6 |
| 1 Clerk | GS-4 |

(As amended Apr. 28, 1978, D.C. Law 2-75, § 2, 24 DCR 7498.)

Effect of Amendment.
1978 — Act Apr. 28, 1978, D.C. Law 2-75, amended section by replacing the last nine lines in subsection (a) with the present last seven lines and by replacing the last

four lines in subsection (b) with the present last six lines.

Legislative History of Law 2-75. See note to § 6-2004.

CHAPTER 21.—CHILD ABUSE AND NEGLECT

Subchapter III.—Child Protective Services Division

Sec.

6-2136. Confidentiality of records and information.

6-2137. Unauthorized disclosure of records.

Subchapter II.—Child Protection Register

§ 6-2113. Access to the Register.

Section referred to in section. 6-2136.

§ 6-2114. Release of information for research and evaluation.

Section referred to in section. 6-2136.

Subchapter III.—Child Protective Services Division

§ 6-2136. Confidentiality of records and information.

(a) Information acquired by staff of the Social Rehabilitation Administration of the Department of Human Resources which identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons or other individuals shall be considered confidential and may be released or divulged only for purposes relating to the identification of abuse or neglect, the identification of service needs or resources, the securing or provision of treatment or direct services for the child or individual identified.

(b) Persons or agencies who are not covered by confidentiality requirements comparable to those in subsection (a), to whom information is released pursuant to this section, section 6-2113, or section 6-2114 must sign a statement that they will not divulge such confidential information for purposes unrelated to the purposes of treatment, identification or evaluation. (Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 2 of the Confidentiality and Disclosure of Records on Abused and Neglected Children Emergency Act of 1979 (D.C. Act 3-73, Aug. 1, 1979, 26 DCR 633).

Legislative History of Law 3-29. Law 3-29 was introduced in Council and assigned Bill No. 3-159, which was referred to the Committee on Human Resources. The

Bill was adopted on first and second readings on July 17, 1979, and July 31, 1979, respectively. Signed by the Mayor on August 1, 1979, it was assigned Act No. 3-78 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Oct. 18, 1979, D.C. Law 3-29, provided: "That this act may be cited as the 'Confidentiality and Disclosure of Records on Abused and Neglected Children Act of 1979.'"

§ 6-2137. Unauthorized disclosure of records.

Whoever willfully discloses, receives, makes use of or knowingly permits the use of confidential information concerning a child or individual in violation of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia. (Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 2 of the Confidentiality and Disclosure of Records on Abused and Neglected Children Emergency Act of 1979 (D.C. Act 3-73, Aug. 1, 1979, 26 DCR 633).

Legislative History of Law 3-29. See note to § 6-2136.

Reference in Text. This act, referred to in the first sentence of this section, is the Prevention of Child Abuse and Neglect Act of 1977, Sept. 23, 1977, D.C. Law 2-22. For classification of the act to the Code, see the Parallel Reference Tables.

CHAPTER 22.—HUMAN RIGHTS

Subchapter II.—Prohibited Acts of Discrimination

Part F.—General Requirements

Sec.

6-2263. Affirmative action plans.

*Subchapter I.—General Provisions***§ 6-2201. Purpose.**

Section referred to in sections. 1-338.1, 1-338.2.

NOTES TO DECISIONS

Cited in *Jones v. Trailways Corp.* (1979, 477 F. Supp. 642).

*Subchapter II.—Prohibited Acts of Discrimination***Part F.—General Requirements****§ 6-2263. Affirmative action plans.**

(a) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan that has been approved by the Office. An affirmative action plan is any plan devised to effectuate remedial or corrective action in response to past discriminatory practices prohibited under this chapter and may also include those plans devised to provide preferential treatment for a class or classes of persons, which preferential treatment by class would otherwise be prohibited by this chapter and which plan is not devised to contravene the intent of this chapter.

(b) All banks and savings and loan associations, subject to this chapter, shall submit annually to the Office an affirmative action plan which shall include goals and timetables for the remediation or correction of past or present discriminatory practices. Such plan shall be reviewed by the Office and is subject to its approval.

(c) It shall be an unlawful discriminatory practice for any bank or savings and loan association, subject to this chapter, to fail to develop an affirmative action plan approved by the Office or fail to comply substantially with the terms of such affirmative action plan.

(d) The Office shall develop and promulgate guidelines which will set forth the affirmative action requirements of this section and shall incorporate, but not be limited to, applicable federal guidelines. Such guidelines shall be promulgated by the Office within one hundred twenty (120) days of the enactment of this law consistent with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) and shall not become effective until sixty (60) calendar days following submission to the Council.

(Dec. 13, 1977, D.C. Law 2-38, title II, § 253, 24 DCR 6038; Mar. 3, 1979, D.C. Law 2-140, § 3, 25 DCR 5473.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-140, amended section by designating the formerly undesignated provisions of this section as subsection (a), and by adding subsections (b), (c) and (d).

Legislative History of Law 2-140. Law 2-140 was introduced in Council and assigned Bill No. 2-294, which

was referred to the Committee on Employment and Economic Development. The Bill was adopted on first, amended first, second amended first, and second readings on September 19, 1978, October 3, 1978, October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 27, 1978, it was assigned Act No. 2-301 and transmitted to both Houses of Congress for its review.

Subchapter III.—Procedures

§ 6-2281. Authority of the Director and Commission.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Federal suit barred for failure to seek local relief. — Failure of plaintiff to seek relief first from the Office of Human Rights precluded his federal suit alleging age discrimination in employment since the District's

administrative scheme met the requirements of 29 U.S.C. § 633 (b) which mandates a preliminary resort to state remedies. *Enos v. Kaiser Indus. Corp.* (1978, 443 F. Supp. 798).

CHAPTER 23.—ENERGY RESOURCES SHORTAGES

Sec.

6-2301. Definitions.

6-2302. Penalties — Prosecution of violations — Authority to implement federal mandatory allocation program.

Sec.

6-2303. Applicability of contested case provision of the Administrative Procedure Act.

§ 6-2301. Definitions.

(a) As used in this chapter, the words “crisis”, “disaster”, “catastrophe”, and “or similar public emergency” refer to a situation where the health, safety, or welfare of citizens of the District of Columbia is threatened by reason of an actual or impending acute shortage in usable energy resources.

(b) Upon reasonable apprehension of the existence of a public emergency and the determination by the Mayor that the issuance of an order is necessary for the immediate preservation of the public peace, health, safety, or welfare, the Mayor shall issue an emergency executive order stating: (1) the existence, nature, extent, and severity of the emergency; (2) the measures necessary to relieve the emergency; (3) the specific requirements of the order and the persons upon whom the order is binding; and (4) the duration of the order.

(c) An emergency executive order may direct any person or group, or class of persons, in the District to reduce or otherwise alter the hours during which they conduct business or similar activity at premises established and maintained for a business, public, or other purpose, adjust temperature requirements, and may relate the requirements established in the emergency executive order to the number of persons participating in the conduct of such business or similar activity. In the case of a business or activity that is conducted at more than one location or address, the total number of persons regularly engaged at each such location or address during a regular working day shall be used for purposes of determining the applicability of such emergency executive order.

(d) Notwithstanding any provision of the Air Quality Control Regulations of the District of Columbia, Regulation 72-12, effective July 7, 1972, as amended, the Mayor may, by issuance of an emergency executive order, direct any person, group, or class of persons in the District of Columbia to modify the type and quality of fuel oil used for the period during which the emergency executive order is in effect.

(e) Any emergency executive order shall be effective for a period of no more than fifteen (15) calendar days from the day it is signed by the Mayor, but may be rescinded by the Mayor within that period should the Mayor determine that the public emergency no longer exists.

(f) Any emergency executive order may be extended at the conclusion of the fifteen (15) day period only upon request by the Mayor for the adoption of an emergency act by the Council of the District of Columbia. The issuance of such an extension shall be based upon the conditions, and include the terms, required by subsection (b) of this section.

(g) Upon the entry of any such emergency executive order or the adoption of an emergency act by the Council of the District of Columbia, the Mayor shall forthwith cause the order or act to be published in the District of Columbia Register, in two (2) daily newspapers of general circulation in the District of Columbia, and cause the posting of the order or act in public places in the District of Columbia.

(h) The Mayor may adopt and implement such rules and regulations as he or she may find to be necessary and appropriate to carry out the purposes of this chapter pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). These rules and regulations shall provide for procedures to identify the public emergency apprehension provided in subsection (b) of this section and plans for the implementation of this chapter. In proposing rules and regulations to carry out the purposes of this chapter, the Mayor shall give appropriate consideration to energy savings programs of retail establishments and of the need for special provisions concerning suppliers of essential services, such as energy suppliers and regulated public utilities and health care facilities.

(i) The Mayor may establish and implement regional programs and agreements for the coordination of energy resource programs and actions of the District of Columbia, taken pursuant to this chapter, with those of the federal government and other jurisdictions. (Apr. 20, 1978, D.C. Law 2-74, § 2, 24 DCR 9501.)

Legislative History of Law 2-74. Law 2-74 was introduced in Council and assigned Bill No. 2-124, which was referred to the Committee on Government Operations and to the Committee on Transportation and Environmental Affairs for comments. The Bill was adopted on first and second readings on October 11, 1977

and October 25, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-152 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Apr. 20, 1978, D.C. Law 2-74, provided "That this act may be cited as the 'Energy Resources Shortages Act of 1977.'"

§ 6-2302. Penalties — Prosecution of violations — Authority to implement federal mandatory allocation program.

An emergency executive order promulgated by the Mayor or an emergency act of the Council adopted pursuant hereto may provide for the imposition of a civil penalty, not to exceed one thousand dollars (\$1,000) for each violation, in lieu of or in addition to the criminal penalties provided herein, and for the method and conditions of its collection. Violations of any order, rule or regulation adopted by the Mayor, or an emergency act of the Council of the District of Columbia adopted pursuant to this authority, shall be prosecuted in the name of the District of Columbia by the Corporation Counsel or any of his or her assistants. In addition to the specific emergency powers provided herein, the Mayor or Council of the District of Columbia has full authority to implement the federal mandatory allocation program as set forth in the Emergency Petroleum Allocation Act of 1973 (87 Stat. 627), as well as succeeding federal programs, laws, orders, rules, or regulations relating to the allocation, conservation, or consumption of energy resources, as provided in this chapter. (Apr. 20, 1978, D.C. Law 2-74, § 3, 24 DCR 9501.)

Legislative History of Law 2-74. See note to § 6-2301.

§ 6-2303. Applicability of contested case provision of the Administrative Procedure Act.

No emergency executive order promulgated by the Mayor pursuant to this chapter shall be subject to the contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). (Apr. 20, 1978, D.C. Law 2-74, § 4, 24 DCR 9501.)

Legislative History of Law 2-74. See note to § 6-2301.

CHAPTER 24.—ANIMAL CONTROL

Sec.

- 6-2401. Definitions.
- 6-2402. Animal Control Agency.
- 6-2403. Vaccinations.
- 6-2404. Licenses and fees.
- 6-2405. Impoundment.
- 6-2406. Redemption by owner.

Sec.

- 6-2407. Adoption.
- 6-2408. Prohibited conduct.
- 6-2409. Animal hobby permit.
- 6-2410. Education and incentive program.
- 6-2411. Penalty.
- 6-2412. Notice of violation.

§ 6-2401. Definitions.

For the purposes of this chapter:

(a) The term “animal at large” means any animal found off the premises of its owner and neither leashed nor otherwise under the immediate control of a person capable of physically restraining it.

(b) The term “animal shelter” means a District of Columbia government facility used by the Animal Control Agency for the care and detention of animals.

(c) The term “dangerous animal” means an animal that because of specific training or demonstrated behavior threatens the health or safety of the public.

(d) The term “Mayor” means the Mayor of the District of Columbia or his designee.

(e) The term “owner” means a person in the District of Columbia who purchases or keeps an animal in temporary or permanent custody except as provided in section 6-2404.

(f) The term “vaccinated” means protected by a documented inoculation that the Mayor, consistent with the practices of veterinary medicine, determines is currently effective.

(Oct. 18, 1979, D.C. Law 3-30, § 2, 26 DCR 765.)

Legislative History of Law 3-30. Law 3-30 was introduced in Council and assigned Bill No. 3-75, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on August

7, 1979, it was assigned Act No. 3-80 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Oct. 18, 1979, D.C. Law 3-30, provided: “That this act may be cited as the ‘Animal Control Act of 1979.’”

§ 6-2402. Animal Control Agency.

(a) The Mayor may contract, either by negotiation or competitive bid, with a District of Columbia humane organization to serve as the Animal Control Agency. The Mayor may delegate all or part of his authority under this chapter, including the issuance of notices of violations, to the Animal Control Agency.

(b) The Animal Control Agency shall deliver all fees collected under this chapter to the Mayor. (Oct. 18, 1979, D.C. Law 3-30, § 3, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2403. Vaccinations.

(a) An owner who has a dog over the age of four (4) months shall have the dog vaccinated against rabies and distemper.

(b) The Mayor shall provide a free anti-rabies vaccination clinic annually. (Oct. 18, 1979, D.C. Law 3-30, § 4, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2404. Licenses and fees.

(a) For purposes of this section, “owner” shall not include: (1) a licensed veterinary hospital, (2) a licensed pet shop, and (3) an incorporated animal welfare agency not engaged in the sale of animals.

(b) An owner who has a dog over the age of four (4) months shall before July 1 of each year, or within ten (10) days of acquiring the dog, or within ten (10) days after the dog becomes four (4) months of age, obtain an annual license. An owner shall ensure that his dog wears a collar and a license.

(c) Before any annual license may be issued, the owner of the dog shall have the dog vaccinated against rabies and distemper, and shall pay any outstanding fines.

(d) The Mayor shall collect the fees and issue the licenses as provided in this section.

(e) Except as provided in subsection (f) of this section, the annual license fee for a dog is as follows:

(1) no fee for a dog trained to aid the audio-handicapped or blind and actually used for that purpose;

(2) \$5 for a male dog;

(3) \$5 for a female dog certified by a licensed veterinarian as either spayed or incapable of enduring spaying;

(4) \$25 in any other case.

(f) For the year July 1, 1979, to June 30, 1980, the annual license fee for a dog is as follows:

(1) no fee for a dog trained to aid the audio-handicapped or blind and actually used for that purpose;

(2) \$8 in any other case.

(g) No license may be transferred from one dog to another. (Oct. 18, 1979, D.C. Law 3-30, § 5, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

Section referred to in sections. 6-2401, 6-2406, 6-2407, 6-2409.

§ 6-2405. Impoundment.

(a) The Mayor may impound any animal at large or any dangerous animal.

(b) Upon impounding an animal, the Mayor shall make a prompt and reasonable attempt to locate and notify the owner of the impounded animal.

(c) The Mayor may dispose of any wild, sick or badly injured animal upon its impoundment.

(d) The Mayor shall provide appropriate vaccinations for each animal upon its impoundment.

(e) The Mayor shall provide appropriate veterinary services for each dog wearing a valid license upon its impoundment.

(f) The Mayor shall deem abandoned any animal impounded and not redeemed by its owner within seven (7) days of impoundment or, if notice is given under subsection (b) of this section, within seven (7) days of such notice. An animal deemed abandoned shall become the property of the District of Columbia and may be adopted or disposed of in a humane manner.

(g) The Mayor shall not release an animal unless it is vaccinated against rabies.

(h) The Mayor shall not release a sick or dangerous animal to anyone other than a licensed veterinarian until reasonably satisfied that it is safe to do so. (Oct. 18, 1979, D.C. Law 3-30, § 6, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

Section referred to in section. 6-2406.

§ 6-2406. Redemption by owner.

(a) The Mayor shall not release a dog to its owner unless the owner has obtained a license as provided in section 6-2404.

(b) An owner of an animal that is impounded shall pay the following:

(1) an impoundment fee of \$10;

(2) a boarding fee of \$3 for each night after the first night;

- (3) the cost of veterinary services, including vaccinations, provided by the Mayor; and
- (4) any outstanding fines.

(c) The Mayor shall issue a notice of violation to an owner of an animal impounded under section 6-2405 except that this subsection shall not apply the first time an owner has an animal impounded. (Oct. 18, 1979, D.C. Law 3-30, § 7, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2407. Adoption.

(a) The Mayor shall not release a dog for adoption unless the person adopting the dog obtains a license as provided in section 6-2404.

(b)(1) The Mayor shall not release an animal over the age of six (6) months for adoption unless (A) the animal has been spayed or neutered and (B) the person adopting the animal has paid the expense of spaying or neutering.

(2) The Mayor shall not release an animal under the age of six (6) months for adoption unless the person adopting the animal has paid the expense of spaying or neutering the animal. The person adopting the animal shall have it spayed or neutered before it becomes six (6) months of age.

(Oct. 18, 1979, D.C. Law 3-30, § 8, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2408. Prohibited conduct.

(a) No owner of an animal shall allow the animal to go at large.

(b) No person shall falsely deny ownership of any animal.

(c) No person shall remove the license of a dog without the permission of its owner.

(d) No person shall change the natural color of a baby chicken, duckling, other fowl or rabbit.

(e) No dog shall be permitted on any school ground when school is in session or on any public recreation area unless the dog is leashed. (Oct. 18, 1979, D.C. Law 3-30, § 9, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2409. Animal hobby permit.

(a) No person shall own or keep five (5) or more mammals, larger than a guinea pig and over the age of four (4) months, without obtaining an animal hobby permit: Except, that this section shall not apply to a licensed pet shop, licensed veterinary hospital, circus or traveling exhibition.

(b) An owner of five (5) or more mammals shall before July 1 of each year or within ten (10) days of acquiring five (5) or more mammals obtain the permit required by this section.

(c) An owner applying for an animal hobby permit shall fully describe the kind and number of mammals to be maintained and the premises where the mammals are to be kept.

(d) No animal hobby permit shall be issued to:

(1) a dog owner unless the owner has obtained a license for each dog as provided in section 6-2404;

(2) an owner who maintains mammals for commercial purposes. For purposes of this section, "commercial purposes" shall not include the sale of offspring if such sales are occasional and are not the primary purpose for maintaining the mammals.

(e) The Mayor shall collect the fees and issue the permits as provided in this section.

(f) A holder of an animal hobby permit shall provide his mammals with appropriate veterinary care. A holder of an animal hobby permit shall maintain the premises and enclosures where the mammals are kept in a clean and sanitary condition.

(g) A holder of an animal hobby permit shall not permit objectionable odors or noises to disturb the comfort or quiet of any neighborhood. A holder of an animal hobby permit shall not permit a mammal to commit a nuisance on public space or property owned by others.

(h) The Mayor may revoke an animal hobby permit for failure to comply with the provisions of this section. (Oct. 18, 1979, D.C. Law 3-30, § 10, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2410. Education and incentive program.

The Mayor shall implement an education and incentive program, which shall include the following:

- (a) low cost spay and neuter clinic services; and
 - (b) program for education of animal owners.
- (Oct. 18, 1979, D.C. Law 3-30, § 11, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2411. Penalty.

Each person who violates a provision of this chapter shall pay a fine not to exceed \$25. (Oct. 18, 1979, D.C. Law 3-30, § 12, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

§ 6-2412. Notice of violation.

(a) The Mayor may issue a notice of violation to any person who violates a provision of this chapter.

(b) A notice of violation shall:

- (1) state the nature of the violation; and
- (2) describe the procedures provided in this section.

(c) A notice of violation shall be the summons and complaint for the purposes of this chapter.

(d) A person shall answer a notice of violation within fifteen (15) days by:

(1) depositing and forfeiting collateral in an amount established by the Superior Court of the District of Columbia; or

(2) depositing collateral in an amount established by the Superior Court of the District of Columbia and requesting, through the issuing agency, a trial in Court.

(e) The Mayor shall prescribe the form for the notice of violation and establish procedures for the administrative control of the notice of violation. (Oct. 18, 1979, D.C. Law 3-30, § 13, 26 DCR 765.)

Legislative History of Law 3-30. See note to § 6-2401.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

| Chap. | Sec. |
|---|--------|
| 1. Highway Plans | 7-101 |
| 4. Closing Streets, Alleys, or Highways | 7-401 |
| 6. Repair and Construction | 7-601 |
| 7. Street Lighting | 7-701 |
| 14. Public Airport | 7-1401 |

CHAPTER 1.—HIGHWAY PLANS

§ 7-117. Acceptance of dedicated streets — Building restrictions — Right-of-way for sewers and watermains.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the “72 Hour Parking Act of 1979” (D.C. Law 3-31,

Oct. 18, 1979, 26 DCR 776). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 7-135. Federal-aid highway projects — Commissioner’s authority to provide certain payments and services.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made an appropriation for construction projects: Provided, that all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23 (a) of the Federal-Aid Highway Act

of 1968 (Pub. L. 90-495 Aug. 23, 1968), for which funds are provided by Pub. L. 96-93, shall expire on Sept. 30, 1981, except authorizations for projects as to which funds have been obligated in whole or in part prior to such date.

CHAPTER 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

§ 7-401. Street Readjustment — Closing of unnecessary public ways authorized — Disposition of property — Reference to Planning Commission.

NOTES TO DECISIONS

Additional procedures under zoning process. — This chapter contains no provision which would subject the consequences of a street, or alley, closing to additional procedures under the zoning process. *American Univ. Park Citizens Ass’n v. Burka* (D.C. 1979, 400 A.2d 737).

Cited in *Blake Constr. Co. v. District of Columbia* (D.C. 1979, 399 A.2d 76).

§ 7-403. Plats to be prepared showing public way intended to be closed — Approval conditional upon dedication of other property.

NOTES TO DECISIONS

Cited in *American Univ. Park Citizens Ass’n v. Burka* (D.C. 1979, 400 A.2d 737).

§ 7-404. Order for closing public ways — Notice — Effective if no objection within 30 days — Recordation of plats.

NOTES TO DECISIONS

Effective date of Council's order. — According to this section, Council's order is ineffective at least until 30 days following the publication and service of notice of the order.

Blake Constr. Co. v. District of Columbia (D.C. 1979, 399 A.2d 76).

CHAPTER 6.—REPAIR AND CONSTRUCTION

Sec.

7-615. Cutting trenches in highways — Reservation or public space without permit prohibited — Inapplicable to public buildings.

7-616. Penalty — Prosecution.

§ 7-615. Cutting trenches in highways — Reservation or public space without permit prohibited — Inapplicable to public buildings.

It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the Mayor of the District of Columbia. The person obtaining such a permit shall abide by all conditions and provisions of the permit: Provided, that nothing in this section shall be construed to apply to public buildings of the United States, or to diminish the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol. (June 18, 1898, 30 Stat. 477, ch. 467, § 7; Sept. 13, 1978, D.C. Law 2-105, § 2, 25 DCR 1982.)

Effect of amendment.

1978 — Act Sept. 13, 1978, D.C. Law 2-105, amended section by deleting the colon before the word "Provided" and inserting in lieu thereof a period and "The person obtaining such a permit shall abide by all conditions and provisions of the permit:".

Legislative History of Law 2-105. Law 2-105 was introduced in Council and assigned Bill No. 2-246, which

was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 30, 1978 and June 13, 1978, respectively. Signed by the Mayor on July 5, 1978, it was assigned Act No. 2-217 and transmitted to both Houses of Congress for its review.

§ 7-616. Penalty — Prosecution.

Any person violating any of the provisions of section 7-615 shall on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than one hundred dollars nor more than one thousand dollars; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Sept. 13, 1978, D.C. Law 2-105, § 3, 25 DCR 1982.)

Effect of Amendment.

1978 — Act Sept. 13, 1978, D.C. Law 2-105, amended section by deleting "five dollars nor more than one

hundred dollars;" and inserting in lieu thereof "one hundred dollars nor more than one thousand dollars;".

Legislative History of Law 2-105. See note to § 7-615.

CHAPTER 7.—STREET LIGHTING

§ 7-701. Street lighting — Rates for street lighting — Cost and maintenance of lighting facilities — Powers of Commissioner.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made appropriations for various activities, but section 206 of Pub. L. 96-93 provided that such appropriations shall not be available for the payment of rates for electric current for street lighting in excess of two cents per kilowatt-hour for current consumed.

CHAPTER 14.—PUBLIC AIRPORT

§ 7-1401. Construction and operation of airport authorized.

NOTES TO DECISIONS

Federal statute. — The Second Washington Airport Act (§ 7-1401 et seq.) is a federal statute and should not be considered a local District of Columbia statute. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

§ 7-1406. Contracts for supplies and services.

NOTES TO DECISIONS

Contract valid despite interference with local agency's authority. — The Federal Aviation Administration's contractual grant of exclusive rights to a bus company for bus transportation from Dulles International Airport to points in the District of Columbia was valid and enforceable even though it impinged on the regulatory authority of the Washington Metropolitan Area Transit Commission. *Executive Limousine Serv., Inc. v. Adams* (1978, 450 F. Supp. 579).

TITLE 8.—PARKS AND PLAYGROUNDS

| Chap. | Sec. |
|------------------------------------|-------|
| 1. Parks and Playgrounds | 8-101 |
| 2. Recreation Board | 8-201 |

CHAPTER 1.—PARKS AND PLAYGROUNDS

§ 8-108. Park system — Control — Inclusions — Exclusions, improvements, parking spaces — “Business streets” — Conditions requisite.

NOTES TO DECISIONS

Applicability of local laws to federal concessionaires. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

CHAPTER 2.—RECREATION BOARD

Article II.—Functions and Administrative Responsibilities of the Board

| Sec. |
|---|
| 8-209. Superintendent of Recreation — Appointment and duties — Qualifications — Other employees — Volunteer services. |

Article II.—Functions and Administrative Responsibilities of the Board

§ 8-209. Superintendent of Recreation — Appointment and duties — Qualifications — Other employees — Volunteer services.

The Board is hereby authorized to appoint a Superintendent of Recreation, which position is hereby authorized and created, who shall be the chief executive officer of the Board but not a member thereof, and shall be charged with the general organization, administration, and supervision of the program of public recreation contemplated and provided for by this chapter. The Superintendent shall be a person of such training, experience, and capacity as will especially qualify him to discharge the duties of the office. He shall possess those qualifications of education, training, and experience in recreation work as well as executive and administrative experience which will assure a thorough knowledge of current theory and practice in public recreation and give promise of the administrative ability necessary to administer a program of public recreation in and for the Nation’s Capital.

The Board, upon the recommendation of the Superintendent, is empowered to appoint, promote, demote, and terminate the employment of such personnel as are necessary to carry out the purposes of this chapter. The Superintendent may suspend for cause for a period not exceeding thirty days any employee of the Board.

All present personnel of the Community Center and Playgrounds Department whose services have heretofore been rated satisfactory shall be retained by the Board with the understanding that this provision does not contemplate the continued employment of individuals whose service is inefficient, and such personnel shall continue to function under existing rules and regulations until such time as classification and Civil Service requirements have been effected.

The Superintendent and all other regular annual personnel of the Recreation Board shall be employees of the District of Columbia.

Upon recommendation of the Superintendent, the Board is authorized to employ, on a part-time basis, without regard to the prohibition against double salaries provided by section 58 of title

5, U.S. Code, such teachers, custodial, and other employees of the United States, the District of Columbia, and the Board of Education, upon approval by the present employer, as may be necessary to keep in operation and to conduct therein appropriate phases of the recreation program authorized by this chapter.

The respective facilities of the United States, the District of Columbia, and the Board of Education shall, by the agreement of the respective agencies of the Government having control of such facilities, be made available to the Board under the terms of this chapter.

The Superintendent is authorized to employ for a ninety-day period as full- or part-time employees, such referees, umpires, swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees as may be necessary to carry out the recreation program authorized by this chapter: Provided, that the retention in the District service of any such employees for a period longer than ninety days shall be subject to the approval of the Board.

The Board is authorized to accept upon recommendation of the Superintendent the gratis services of such persons as may volunteer to aid in the conduct of any of its activities. (Apr. 29, 1942, 56 Stat. 262, ch. 265, art. II, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Apr. 23, 1958, 72 Stat. 97, Pub. L. 85-383, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(g), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence of the fourth paragraph, by deleting “without reference to Civil Service requirements, and” following “part-time basis” near the beginning of the fifth paragraph, by deleting “without reference to Civil Service requirements, and without regard to the prohibition against double salaries

provided by section 58 of title 5, U.S. Code” preceding the proviso in the seventh paragraph, and by deleting the former last paragraph.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Cross reference. For smoke detector requirements, see § 5-328 et seq.

| Chap. | Sec. |
|---|-------|
| 2. Construction of Public Buildings | 9-201 |
| 3. Sale of Public Lands | 9-301 |
| 6. Washington Convention Center | 9-601 |

CHAPTER 2.—CONSTRUCTION OF PUBLIC BUILDINGS

§ 9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made an appropriation for reimbursement to the United States of funds loaned in compliance with the Act of June 6, 1958 (72 Stat. 183), as amended.

CHAPTER 3.—SALE OF PUBLIC LANDS

§ 9-301. Commissioner authorized to sell real estate.

Conveyance of property. Pursuant to authority of section, Act March 16, 1978, D.C. Law 2-63, 24 DCR 6039, conveying square 491 to the Pennsylvania Avenue Development Corporation, was adopted.

CHAPTER 6.—WASHINGTON CONVENTION CENTER

| Sec. | Sec. |
|---|--|
| 9-601. Findings. | — Expenditures — Buildings and collections for services rendered — Transfer of excess operating profits — Antideficiency Act applicable. |
| 9-602. Convention Center Board of Directors established | 9-606. Annual audit — Report. |
| — Composition — Qualifications — | 9-607. Conflict of interest. |
| Designation of chairman — Term of office — | 9-608. Annual report. |
| Vacancy — Residency requirement — | 9-609. Appropriation. |
| Indictment for felony — Removal — | 9-610. Merit system inapplicable. |
| Compensation — Quorum — Meetings. | |
| 9-603. Duties and responsibilities of Board — | |
| Authorizations — Rules and regulations. | |
| 9-604. Duties and responsibilities of general manager. | |
| 9-605. Washington Convention Center Fund established | |
| — Limitation on assets — Purpose — Deposits | |

§ 9-601. Findings.

The Council of the District of Columbia hereby finds and declares that:

(a) it is essential to the social and economic viability of the District of Columbia to establish major centers of commercial and economic activity within the city;

(b) such a center of activity would result from the development of a convention center located in the downtown section of the District of Columbia, within an area bounded by Ninth Street, H Street, Eleventh Street, and New York Avenue, Northwest;

(c) a convention center would (1) attract large numbers of persons to the downtown area and result in increased business activity in the area surrounding the convention center; (2) enable large national, international, and regional conventions, trade shows, meetings, and exhibitions to be held in the District of Columbia and thereby encourage visits to Washington by residents of other sections of the United States and of other nations; (3) provide a new source of revenue for the District of Columbia as a consequence of its operations and the expanded commercial activities resulting therefrom; and (4) provide expanded employment and business opportunities for residents of the District of Columbia;

(d) a convention center would provide space and facilities for local public shows and exhibitions including, but not limited to, civic and community events and gatherings, athletic and cultural events, entertainment, and such other activities as may be in the interest of the citizens of the District of Columbia; and

(e) in order to achieve maximum utilization of resources and efficiency of operations, a convention center should be operated as a public enterprise, and that for the fiscal soundness of the convention center and the accomplishment of desirable social and economic benefits for the city, the granting of the powers conferred by this chapter is necessary and in the public interest.

(Nov. 3, 1979, D.C. Law 3-36, § 2, 26 DCR 1439.)

Legislative History of Law 3-36. Law 3-36 was introduced in Council and assigned Bill No. 3-94, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 31, 1979 and August 11, 1979, respectively. Signed by the Mayor on September 17, 1979, it was assigned Act No.

3-102 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Nov. 3, 1979, D.C. Law 3-36, provided: "That this act may be cited as the 'Washington Convention Center Management Act of 1979.'"

§ 9-602. Convention Center Board of Directors established — Composition — Qualifications — Designation of Chairman — Term of office — Vacancy — Residency requirement — Indictment for felony — Removal — Compensation — Quorum — Meetings.

(a) There is hereby established as an independent agency of the District of Columbia government, the Convention Center Board of Directors (the "Board").

(b) The Board shall consist of five members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia. At least four (4) of the five (5) members appointed by the Mayor shall be persons with proven expertise in business and financial management. The general manager shall serve as an ex-officio member of the Board.

(c) The Mayor shall, from time to time, designate the Chairman of the Board. The members of the Board shall each serve for a term of three years, beginning on the date such member is confirmed, except that with respect to the members first appointed under this section, the Chairman shall serve for a term of three years, two members shall serve for a term of two years, and two members shall serve for a term of one year, as determined by the Mayor. A member may not serve in excess of two consecutive terms, and if not renominated, shall serve until a successor has been nominated and confirmed. Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy is being filled. A member filling a vacancy may be reappointed, and if not reappointed, shall serve until a successor has been nominated and confirmed. All nominations shall be acted upon within thirty (30) days of the date such nominations are transmitted to the Council, or such nominations shall be deemed to be confirmed.

(d) Each member of the Board shall be a resident of the District of Columbia or establish residency not later than six (6) months after appointment to the Board. The Mayor shall remove any member for failure to establish or maintain residency.

(e) Should a member of the Board be indicted for the commission of a felony, such member shall be automatically suspended from serving on the Board. Upon a final determination of guilt or innocence, the term of such member shall respectively be automatically terminated or reinstated. The Mayor may remove a member of the Board for each of the following reasons:

(1) violation of subchapter VI of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (D.C. Code, sec. 1-1181 et seq.); and

(2) repeated failure to attend meetings as provided in such rules as the Board may adopt; and

(3) repeated failure to carry out official duties.

(f) Members of the Board shall be compensated at the rate of one hundred twenty-five dollars (\$125) for each day or part thereof, for time expended in the performance of official duties, not to exceed the sum of ten thousand dollars (\$10,000) for each fiscal year through fiscal year 1983 and not to exceed the sum of six thousand two hundred fifty dollars (\$6,250) for each fiscal year thereafter. A member of the Board who is also an officer or employee of the District of Columbia or the United States shall serve without additional compensation. Members of the Board shall be reimbursed for travel, subsistence, and other expenses incurred in carrying out official duties.

(g) Three members of the Board shall constitute a quorum for the convening of any meeting of the Board and for the transaction of official business.

(h) The Board shall meet no less than once every sixty (60) days and shall be subject to the provisions of section 1-1503a. (Nov. 3, 1979, D.C. Law 3-36, § 3, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-603. Duties and responsibilities of Board — Authorizations — Rules and regulations.

(a) The Board shall have the following duties and responsibilities:

(1) adopt and publish internal operating rules for the conduct of Board meetings;

(2) develop policies for the management, maintenance and operation of the convention center including but not limited to concessions, vehicle parking facilities or other related facilities;

(3) adopt rules and regulations governing the operation and use of the convention center;

(4) develop and establish a personnel system, rules and regulations setting forth minimum standards for all employees including but not limited to pay, contract terms, vacations, leave, retirement, residence, health and life insurance, employee disability and death benefits, not later than three years after the effective date of this chapter. The Board shall adopt interim personnel rules and regulations until such time as a personnel system is established as provided for herein: Provided, that, any person who applies for a position with the Board and who accepts appointment or is hired to fill a position with the Board shall become a bona fide resident of the District of Columbia within one hundred eighty (180) days of the effective date of such appointment, and shall maintain such residence for the duration of the employment: Provided, further, that the failure to become a District resident or to maintain District residency shall result in the forfeiture of the position to which the said person has been appointed;

(5) select, employ and fix the compensation for a general manager of the convention center and such staff of the Board, as it deems necessary. All staff shall serve at the pleasure of the Board. The appointment or termination of the general manager shall require the concurrence of a majority of the Board;

(6) (A) prepare and submit a budget to the Mayor for inclusion in the annual budget presentation; such annual budget presentation shall include a request for such funds as may be required to plan, promote and prepare for the operation of the convention center, anticipated income, expenses and capital outlays (including a capital improvement plan), all Board expenses and a listing of all agreements and contracts entered into by the Board in excess of \$25,000;

(B) the budget submitted by the Board shall also include estimates of the funds needed to cover operating losses and the recommended sources of such funds. Upon determination of actual operating losses or profits, excluding depreciation on fixed assets acquired with funds other than funds earned in the operation of the convention center, appropriate adjustments shall be made in the budget estimates for the following fiscal year to reflect the actual loss or profit determined;

(C) the budget shall be submitted to the Mayor on the date that other District of Columbia departments and agencies are required to submit their budgets to the Mayor;

(D) the Council of the District of Columbia shall approve and establish the budget, except as to personnel in which case the Council shall establish the maximum amount of funds which will be allocated for personnel, in the same manner and detail as approved and established for departments and agencies under the administrative control of the Mayor as provided in section 1-144(f);

(7) require lessees or permitted occupants to carry public liability insurance or other indemnification protecting the interests of such lessees or occupants, the Board, the members and employees thereof and the District of Columbia;

(8) issue regulations and establish policies for contracting and procurement; such regulations shall also provide for the participation of minorities and locally based businesses in accordance with the Minority Contracting Act of 1976 (D.C. Code, sec. 1-851 et seq.);

(9) establish an accounting and financial reporting system compatible with the Financial Management System of the District of Columbia;

(10) advise the Mayor and the Council of the District of Columbia of all property acquired or disposed of by the Board; and

(11) issue regulations governing the property management function.

(b) To carry out the purposes of this chapter, the Board is authorized to:

(1) enter into contracts with the governments of the District of Columbia and the United States and other public or private entities to achieve any of its purposes. Nothing in this paragraph shall authorize the Board to obligate funds in excess of two hundred thousand dollars (\$200,000) in any one fiscal year, excluding personnel expenses and capital improvement projects, or be construed to alter the responsibilities of the Department of General Services with respect to construction, completion and acceptance of the convention center;

(2) lease or permit the occupancy of any part of the convention center including any or all structures, equipment or facilities;

(3) furnish such services as deemed appropriate to lessees and permitted occupants;

(4) carry public liability insurance or other indemnification protecting the interests of the District of Columbia, the Board, the members and employees thereof, the sufficiency of which may be subject to the approval of the Mayor;

(5) accept gifts of goods and services: Provided, that receipt of such gifts is reported to the Council of the District of Columbia; and

(6) delegate to the general manager by a majority vote of the Board any authority under this subsection.

(c) All rules and regulations of the Board shall be issued under the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). After such rules and regulations have been so issued, they shall be transmitted to the Mayor and the Chairman of the Council and shall take effect at the end of the thirty (30) day period during which the Council of the District of Columbia is in continuous session beginning on the day that the rules and regulations are transmitted to the Chairman unless the Council, during such thirty (30) day period, adopts a resolution disapproving, in whole or in part, such rules and regulations. Following such thirty (30) day period of time, the Board shall publish the rules and regulations not disapproved by the Council in the District of Columbia Register. (Nov. 3, 1979, D.C. Law 3-36, § 4, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-604. Duties and responsibilities of general manager.

The general manager shall perform the following duties and responsibilities:

(a) assist in the preparation of the budget and an annual report;

(b) administer all operating policies, rules and regulations adopted by the Board;

(c) employ personnel;

(d) promote and secure convention center bookings; and

(e) perform such other duties as may be authorized by the Board for the effective and efficient management of the convention center.

(Nov. 3, 1979, D.C. Law 3-36, § 5, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-605. Washington Convention Center Fund established — Limitation on assets — Purpose — Deposits — Expenditures — Billings and collections for services rendered — Transfer of excess operating profits — Antideficiency Act applicable.

(a) There is hereby established a "Washington Convention Center Fund" ("the Fund") to be operated as an enterprise fund with assets not to exceed five hundred thousand dollars (\$500,000) at the end of each fiscal year.

(b) All funds from whatever source derived shall be deposited as soon as practicable into the Fund for the payment of all expenses necessary for the operation and management of the convention center.

(c) All deposits of such monies shall be secured in a manner consistent with deposits of revenues by the District of Columbia government. Expenditures from the Fund shall be made only upon vouchers which have been certified by the designated agent of the Board.

(d) The Board shall be responsible for all billings and collections for services rendered by the convention center.

(e) Within one hundred twenty (120) days after the close of each fiscal year, all operating profits earned by the convention center, excluding depreciation on fixed assets acquired from funds other than monies earned in the convention center operations, which are in excess of five hundred thousand dollars (\$500,000), shall be transferred to the general revenues of the District of Columbia.

(f) Nothing in this chapter shall be construed as excluding the provisions of section 47-105, making the Antideficiency Act (31 U.S.C. § 665) applicable to the District of Columbia. (Nov. 3, 1979, D.C. Law 3-36, § 6, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-606. Annual audit — Report.

(a) The Mayor and the Auditor of the District of Columbia shall examine annually and as appropriate all accounts and records of financial transactions of the Washington Convention Center Fund, including its receipts, income from whatever source derived, disbursements, contracts, resources, and any other matter relating to its financial operation and standing, including capital projects.

(b) A report of all audits shall be submitted to the Council of the District of Columbia. (Nov. 3, 1979, D.C. Law 3-36, § 7, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-607. Conflict of interest.

No employee shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial and objective performance of assigned duties and responsibilities. (Nov. 3, 1979, D.C. Law 3-36, § 8, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-608. Annual report.

Within one hundred twenty (120) days after the end of each fiscal year, the Board shall submit to the Mayor, the Council, and the Auditor of the District of Columbia, a detailed annual report setting forth a description of the convention center's operation and accomplishments during the year, including an objective evaluation of the degree of success attained, including:

(a) an event attendance analysis;

(b) income and expenditures of the convention center during the year in accordance with categories or classifications established by the financial management system, projected and actual;

- (c) sources of income by category, projected and actual;
 - (d) operating expenditures, projected and actual;
 - (e) assets and liabilities of the Fund at the end of the fiscal year;
 - (f) economic impact results and projections;
 - (g) analysis of work force;
 - (h) recommendations as to the future management and operation of the convention center;
- and
- (i) such other information as shall be deemed pertinent by the Mayor, the Council and the Auditor of the District of Columbia.
- (Nov. 3, 1979, D.C. Law 3-36, § 9, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-609. Appropriation.

There is authorized to be appropriated such funds as may be necessary to carry out the purposes of this chapter. (Nov. 3, 1979, D.C. Law 3-36, § 10, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

§ 9-610. Merit system inapplicable.

The District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.) shall not apply to employees of the convention center. (Nov. 3, 1979, D.C. Law 3-36, § 11, 26 DCR 1439.)

Legislative History of Law 3-36. See note to § 9-601.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

| Chap. | Sec. |
|--------------------------------------|--------|
| 2. Retail Service Stations | 10-201 |

CHAPTER 2.—RETAIL SERVICE STATIONS

*Subchapter III.—Moratorium on Conversions to Limited
Service Retail Service Stations*

§ 10-231. Prohibition on conversions.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the Moratorium on Retail Service Station Conversions Emergency Act of 1978 (D.C. Act 2-329, Dec. 29, 1978, 25 DCR 7007).
1979 — For temporary amendment of section, see sec. 2 of the Moratorium on Retail Service Station Conversions

Emergency Act of 1979 (D.C. Act 3-19, Apr. 13, 1979, 25 DCR 9498); sec. 2 of the Second Moratorium on Retail Service Station Conversions Emergency Act of 1979 (D.C. Act 3-71, Aug. 1, 1979, 26 DCR 623); and sec. 2 of the Third Moratorium on Retail Service Station Conversions Emergency Act of 1979 (D.C. Act 3-116, Nov. 2, 1979, 26 DCR 2074).

Part II

Judiciary and Judicial Procedure

- TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.
TITLE 12. RIGHT TO REMEDY.
TITLE 13. PROCEDURE GENERALLY.
TITLE 14. PROOF.
TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.
TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 17. REVIEW.

TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

Cross reference. For adjudication of certain traffic offenses, see § 40-1101 et seq.

| Chap. | Sec. |
|--|---------|
| 1. General Provisions | 11-101 |
| 5. United States District Court for the District of Columbia | 11-501 |
| 7. District of Columbia Court of Appeals | 11-701 |
| 9. Superior Court of the District of Columbia | 11-901 |
| 11. Family Division of the Superior Court | 11-1101 |
| 15. Judges of the District of Columbia Courts | 11-1501 |
| 19. Juries and Jurors | 11-1901 |
| 25. Attorneys | 11-2501 |
| 26. Representation of Indigents in Criminal Cases | 11-2601 |

CHAPTER 1.—GENERAL PROVISIONS

§ 11-101. Judicial power.

NOTES TO DECISIONS

Purpose of court reform law. — Underlying the District of Columbia Court Reform and Criminal Procedure Act of 1970 (§ 11-101 et seq.) was Congress' wish to delineate the functions of the federal and local court systems in the District of Columbia. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

This section does not vitiate the essential character of the District as an arm of the sovereign United States. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

All Writs Act (28 U.S.C. § 1651) applies to the local District of Columbia courts. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Superior Court may issue extraterritorial writs in aid of its authorized jurisdiction. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Cited in *Gillis v. United States* (D.C. 1979, 400 A.2d 311); *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744); *Hackney v. United States* (D.C. 1978, 389 A.2d 1336); *Jameson's Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

§ 11-102. Status of District of Columbia Court of Appeals.

NOTES TO DECISIONS

Court of Appeals akin to state supreme court. — The Court of Appeals's status is that of a state supreme court. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

Cited in *Lee v. Flintkote Co.* (1979, 593 F.2d 1275, U.S. App. D.C.); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

CHAPTER 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Subchapter I.—Jurisdiction

§ 11-501. Civil jurisdiction.

NOTES TO DECISIONS

Meaning of “civil action”. — The phrase “civil action” in subdivision (4) has the same broad meaning that it has in the Federal Rules of Civil Procedure. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Third-party practice within federal courts' jurisdiction. — Third-party practice generated in the natural course of \$50,000-plus suits under subdivision (4) remains within the jurisdiction of the United States courts for the duration of the third-party practice and the original suit. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Where a plaintiff's complaint against a third-party defendant formed an integral part of a civil action brought

for the purpose of assigning liability and awarding damages, and that action had commenced with the filing in the District Court of an original complaint during the 30-month period under subdivision (4), the third-party practice fell within the District Court's local jurisdiction under this section. *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

Cited in *Husovsky v. United States* (1978, 590 F.2d 944, 191 U.S. App. D.C. 242); *Safer v. Perper* (1977, 569 F.2d 87, 186 U.S. App. D.C. 256).

§ 11-502. Criminal jurisdiction.

NOTES TO DECISIONS

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

Subchapter I.—Continuation and Organization

§ 11-707. Assignment of judges to and from Superior Court.

NOTES TO DECISIONS

Cited in *Smallwood v. United States* (D.C. 1979, 407 A.2d 675); *Bronson v. Borst* (D.C. 1979, 404 A.2d 960); *Jackson v. United States* (D.C. 1979, 404 A.2d 911); *Johnson v. United States* (D.C. 1979, 404 A.2d 162); *Hall v. Cafritz* (D.C. 1979, 402 A.2d 828); *Morgan v. United States* (D.C. 1979, 402 A.2d 598); *Beck v. United States* (D.C. 1979, 402 A.2d 418); *Citizens Ass'n v. District of Columbia Zoning Comm'n* (D.C. 1979, 402 A.2d 36); *Union Travel Assocs. v.*

International Assocs. (D.C. 1979, 401 A.2d 105); *Sousa v. United States* (D.C. 1979, 400 A.2d 1036); *Reid v. District of Columbia* (D.C. 1978, 399 A.2d 1293); *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850); *Smith v. District of Columbia* (D.C. 1979, 399 A.2d 213); *In re Y.G.* (D.C. 1979, 399 A.2d 65); *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Subchapter II.—Jurisdiction

§ 11-721. Orders and judgments of the Superior Court.

NOTES TO DECISIONS

“Final” construed. — For purposes of appeal an order is final only if it disposes of an entire case on the merits, leaving nothing for the court to do but execute the judgment it has rendered. *Burtoff v. Burtoff* (D.C. 1978, 390 A.2d 989); *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

A final order must dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Trilon Plaza Co. v. Allstate Leasing Corp.* (D.C. 1979, 399 A.2d 34).

For an order to be final for review purposes the court does not look at its name, its propriety, or its normal function. *Trilon Plaza Co. v. Allstate Leasing Corp.* (D.C. 1979, 399 A.2d 34).

Final judgments are not limited to the last order in a proceeding. *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

Order stating sanction or quantum of relief. — When appellate courts have had to determine which order of the trial court is final and therefore appealable, the general rule is that the order stating the sanction, quantum of relief, or the like is the one with requisite finality. *Trilon Plaza Co. v. Allstate Leasing Corp.* (D.C. 1979, 399 A.2d 34).

Order treated as final. — Trial court orders which threaten the integrity of the judicial process may be treated as final for the purpose of review. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

No final judgment. — In an action by a wife for separate maintenance a determination of the validity of an antenuptial agreement, interposed as an affirmative defense, was not a final judgment because the exact amount of the husband’s support obligation had been left for future determination. *Burtoff v. Burtoff* (D.C. 1978, 390 A.2d 989).

Appeal dismissed where appellant not aggrieved party. — A hospital superintendent could not appeal a trial court’s order releasing one whom he had sought unsuccessfully to have judicially hospitalized under § 21-501 et seq. because the superintendent was not an aggrieved party within the meaning of subsection (b) and any such right of appeal would also be contrary to the design and intent of § 21-501 et seq. *In re Lomax* (D.C. 1978, 386 A.2d 1185).

An executor directed by court order to collect a decedent’s share of the proceeds of the sale of a real estate venture and to include those proceeds in the assets of the estate rather than distributing them to one of the decedent’s creditors was not aggrieved by an order which denied priority status to a creditor but was in no way a decision adverse to the estate or to the executor as its representative; hence his appeal was dismissed. *In re Estate of Jacobson* (D.C. 1978, 387 A.2d 590).

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536); *Hsu v. United States* (D.C. 1978, 392 A.2d 972); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

§ 11-722. Administrative orders and decisions.

NOTES TO DECISIONS

Zoning decision final despite motion for reconsideration. — Election to file a motion for reconsideration with the Board of Zoning Appeals prior to petitioning the District of Columbia Court of Appeals for review did not affect the finality of the Board’s decision. *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 391 A.2d 269).

And review proper where Board ultimately denied reconsideration. — Considerations of finality did not require the reviewing court to withhold its jurisdiction to review an administrative order of the Board of Zoning

Appeals where a motion for reconsideration filed with the Board was ultimately denied. *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 391 A.2d 269).

Cited in *Rorie v. District of Columbia Dep’t of Human Resources* (D.C. 1979, 403 A.2d 1148); *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71); *Arellano v. District of Columbia Police & Firemen’s Retirement & Relief Bd.* (D.C. 1978, 384 A.2d 29); *Wieck v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1978, 383 A.2d 7).

CHAPTER 9.—SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Subchapter I.—Continuation and Organization

§ 11-902. Organization of the court.

NOTES TO DECISIONS

Authority of divisions. — While the Superior Court, by statute, has five divisions, each division possesses the

undivided authority of the Court. *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

§ 11-910. Clerks and secretaries for judges.

NOTES TO DECISIONS

Cited in *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

Subchapter II.—Jurisdiction

§ 11-921. Civil jurisdiction.

NOTES TO DECISIONS

Dual court system was abolished with enactment of this section. *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

Effect of section on jurisdiction of Superior and District Courts. — This section gives the Superior Court plenary jurisdiction over civil matters brought in the District of Columbia and correspondingly limits the civil jurisdiction of the District Court to those special matters of which the federal district courts nationwide may take cognizance. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

In establishing a unified local court system with this section Congress divested the federal courts of jurisdiction over local matters, restricting those courts to those matters generally viewed as federal business, and conferred upon the Superior Court the jurisdictional power

to adjudicate local civil actions. *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

Superior Court is no longer a court of limited jurisdiction, but a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law. *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

Jurisdiction over action for visitation rights stems from general equitable powers of the Superior Court rather than from § 11-1101, which relates to the jurisdiction of the Family Division of the Superior Court. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384); *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 11-922. Transfer of civil actions to Superior Court.

NOTES TO DECISIONS

Case may be transferred in interlocutory posture. — “Action” as used in subsection (b) refers not only to a case prior to rulings and interlocutory orders but also to a case in any posture prior to disposition, and a case may be transferred to Superior Court in an interlocutory posture. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Transferred case treated as if originated in Superior Court. — Congress intended that cases transferred under subsection (b) be treated as if they had been brought initially in Superior Court. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Even as to interlocutory rulings. — Where the District Court has entered an interlocutory order, subsequent transfer of the case under subsection (b) empowers the Superior Court to treat the order as its own and empowers review of the order on appeal. *Reichman v. Franklin Simon Corp.* (D.C. 1978, 392 A.2d 9).

Cited in *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

§ 11-923. Criminal jurisdiction; commitment.

NOTES TO DECISIONS

Presumption of jurisdiction in court where charge filed. — It is presumed that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Language suggests geographical limitation on jurisdiction. — Section 11-1101 governing Family Division jurisdiction lacks the language of subsection (b) (1) of this section suggesting a geographical limitation. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Locality of crime includes place where part of act done. — Wherever any part of a criminal act is done, that place becomes as much the locality of the crime as is the place where the crime may have culminated. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Trial court had jurisdiction where the defendant, convicted of armed robbery, assault with a dangerous

weapon and mayhem and malicious disfigurement, approached complainant in his car within the District of Columbia, rode with complainant into Maryland, returned with him to the District and was overheard threatening the complainant with injury if he did not remain silent while at an intersection concededly within the District. *Adair v. United States* (D.C. 1978, 391 A.2d 288).

Local courts may issue writs of habeas corpus ad prosequendum. — Since Congress in reforming the District of Columbia court system could not have intended to remove the local courts' power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1652). *United States v. Cogdell* (1978, 585 F.2d 1130, 190 U.S. App. D.C. 185), cert. denied, 449 U.S. 957, 99 S. Ct. 1509, 59 L. Ed. 2d 777 (1979).

Subchapter III.—Miscellaneous Provisions

§ 11-941. Issuance of warrants; record.

NOTES TO DECISIONS

Warrant issued outside District for execution within. — This section does not prevent a judge from issuing, outside the District, a search warrant for execution in the District. *United States v. Strother* (1978, 578 F.2d 397, 188

U.S. App. D.C. 155), approving *United States v. Coates* (D.C. Super. 1978, 106 Daily Wash. L. Rep., No. 34, p. 313).

Cited in *United States v. Boettcher* (1978, 588 F.2d 89).

§ 11-942. Subpoenas.

NOTES TO DECISIONS

Purpose of Subsection (b). — Subsection (b) was enacted so that in felony cases the Superior Court would have the same subpoena power conferred on federal district courts. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Was to differentiate between felony and misdemeanor cases. — The language "in which a felony is charged" in subsection (b) was not meant to deprive Superior Court grand juries investigating felony cases of nationwide subpoena power but rather was included only to differentiate between misdemeanor and felony cases, as in § 23-563. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Authority to issue writs ad testificandum extraterritorially is a necessary aid to and coextensive with the court's jurisdiction to issue nationwide

subpoenas. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And writ to produce prisoner for grand jury lineup. — The Superior Court, upon satisfying itself that a writ is in "necessary" aid of its jurisdiction within the meaning of 28 U.S.C. § 1651, may issue a writ of habeas corpus ad testificandum where it is necessary that a prisoner be produced pursuant to a grand jury subpoena commanding him to appear in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Subpoena power of grand jury. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Superior Court grand jury had the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

§ 11-944. Contempt power.

NOTES TO DECISIONS

Evidence sufficient to establish contemptuous conduct. — *In re Gregory* (D.C. 1978, 387 A.2d 720).

§ 11-946. Rules of court.

NOTES TO DECISIONS

Cited in *Taylor v. Washington Hosp. Center* (D.C. 1979, 407 A.2d 585); *Sullivan v. United States* (D.C. 1979, 404 A.2d 153); *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 11. — FAMILY DIVISION OF THE SUPERIOR COURT

§ 11-1101. Exclusive jurisdiction.

NOTES TO DECISIONS

Section contemplates jurisdiction over acts outside District. — This section not only lacks language suggesting a geographical limitation on jurisdiction, as found in § 11-923 (b) (1) which limits the Criminal Division’s jurisdiction, but on the contrary includes language contemplating the coverage of some acts outside the District of Columbia. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Jurisdiction proper. — Residents of the District of Columbia juvenile detention facility located in Maryland who were charged with assaulting counselors there were subject to the jurisdiction of the Family Division and did not have a constitutional right to a proceeding in Maryland. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Jurisdictional limitations of § 16-2342 apply. — Section 16-2342, which imposes jurisdictional time limitations, is applicable by its terms to parentage and support proceedings brought under this section. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Right to visitation is distinct from the duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon the establishment of parentage by sufficient proof. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Jurisdiction over visitation arises from general equitable powers. — Jurisdiction over an action for visitation rights stems from the general equitable powers of the Superior Court rather than from this section relating to the jurisdiction of the Family Division. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Cited in *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139); *Andrade v. Jackson* (D.C. 1979, 401 A.2d 990).

CHAPTER 15.—JUDGES OF THE DISTRICT OF COLUMBIA COURTS

| Sec. | Sec. |
|--|--|
| Subchapter III.—Retirement | 11-1567. Survivor annuity; payments to fund. |
| 11-1561. Definitions. | 11-1569. Survivor annuity; payment; order of precedence. |
| 11-1563. Withholding of retirement payments; lump-sum credit. | 11-1570. Retirement and annuity fund. |
| 11-1564. Computation of retirement salary; election to credit other service. | 11-1571. Periodic increases; existing rights. |

Subchapter III.—Retirement

§ 11-1561. Definitions.

For purposes of this subchapter—

(4) The term “fund” means the District of Columbia Judges’ Retirement Fund established by section 1-1814 (a).

(9) The term “lump-sum credit for retirement” means the unrefunded amount consisting of —

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before he has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier;

* * * * *

(10) The term “lump-sum credit for survivor annuity” means the unrefunded amount consisting of—

* * * * *

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before he has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier;

* * * * *

(As amended Nov. 17, 1979, Publ. L. 96-122, §§ 124 (b) (1); 254 (a) (1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by substituting “Judges’ Retirement Fund established by section 1-814 (a)” for “Judicial Retirement and Survivors Annuity Fund as provided in section 11-570” in paragraph (4), and by adding “or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier” to the end of subparagraph (C) of paragraphs (9) and (10).

Effective date. Sections 124 (d) and 254 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 1-1802.

Cross reference. For definition of “retirement program,” see § 1-1802.

§ 11-1563. Withholding of retirement payments; lump-sum credit.

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November 1, 1964, who has elected to come within the provisions of this subchapter an amount equal to $3\frac{1}{2}$ per centum of his basic salary. Amounts so deducted and withheld shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the fund. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which he shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge’s salary.

(b) If he has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest computed in accordance with section 11-1564 (d) (2), a sum equal to $3\frac{1}{2}$ per centum of his basic salary received for judicial service performed by him as a judge prior to the date he became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioner. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to eliminate the service involved for purposes of retirement salary computation, except as provided in section 11-1564(d).

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 124 (b) (2), 254 (b) (1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by substituting “paid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the fund” for “deposited in the fund in

accordance with procedures established by the Commissioner” in the second sentence of subsection (a), and “computed in accordance with section 11-1564 (d) (2)” for “at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on

December 31 of each year” in the first sentence of subsection (b).

1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Effective date. Sections 124 (d) and 254 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the

§ 11-1564. Computation of retirement salary; election to credit other service.

* * * * *

(d)

* * * * *

(2) Interest on deposits under this subsection and section 11-1567 (b) shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Judges’ Retirement Fund (established by section 1-1814) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the first payment if he makes installment deposits, except that —

(i) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits;

(ii) for so much of any such period which occurs between January 1, 1948, and the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits; and

(iii) for so much of any such period which occurs prior to January 1, 1948, the rate of 4 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(B) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(C) If a judge elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

Interest may not be charged for a period of separation from the service which began before October 31, 1956.

* * * * *

(4) If a judge elects to be credited with service under subsection (c) of this section, his lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District of Columbia Judges’ Retirement Fund established by section 1-1814 (a). The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 124 (b) (3), 254 (b) (2), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by rewriting paragraph (2) of subsection (d), and by substituting “Judges’ Retirement Fund established by section 1-1814 (a)” for “Judicial Retirement and Survivors Annuity Fund” in the first sentence of paragraph (4) of that subsection.

Effective date. Sections 124 (d) and 254 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.
Section referred to in sections. 11-1563, 11-1567.

§ 11-1567. Survivor annuity; payments to fund.

* * * * *

(b) If he has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest computed in accordance with section 11-1564 (d) (2), a sum equal to 3 per centum of his salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11-1565); and a sum equal to 3 per centum of his basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11-1564 (d). Except to the extent that the Commissioner has made refund to the judge under section 11-1564 (d) (6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11-1564 (d) (4), of his lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11-1564 (d) (3). Each judge may elect to make deposits under this subsection in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioner. Deposits under this subsection also may be made by the survivor of a judge.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, § 254 (b) (3), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by substituting “computed in accordance with section 11-1564 (d) (2)” for “at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year” in the first sentence of subsection (b).

Effective date. Section 254 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.
Section referred to in section. 11-1564.

§ 11-1569. Survivor annuity; payment; order of precedence.

* * * * *

(c) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of the judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier, the difference shall be paid upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (b).

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, § 254 (a) (2), 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting “or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier” in subsection (c).

Effective date. Section 254 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 11-1570. Retirement and annuity fund.

(a) The District of Columbia Judicial Retirement and Survivors Annuity Fund is hereby continued in the Treasury and appropriated for the payment of retirement salaries, annuities, refunds, and allowances as provided in this subchapter until such time as all amounts in such Fund have been expended or transferred to the District of Columbia Judges' Retirement Fund established by section 1-1814 (a). Thereafter the retirement salaries, annuities, refunds, and allowances provided for in this subchapter shall be paid from such Fund.

(b) The Secretary shall invest, from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, any portions of the District of Columbia Judicial Retirement and Survivors Annuity Fund as in his judgment may not be immediately required for payments under the first sentence of subsection (a) and income derived from such investments shall constitute a part of the District of Columbia Judicial Retirement and Survivors Annuity Fund.

* * * * *

(d) None of the moneys mentioned in this subchapter (including moneys in the District of Columbia Judges' Retirement Fund) shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process.

(As amended Nov. 17, 1979, Pub. L. 96-122, § 124 (b) (4), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding "until such time as all amounts in such Fund have been expended or transferred to the District of Columbia Judges' Retirement Fund established by section 1-1814 (a)" at the end of the first sentence and substituting the present second sentence for the former last two sentences in subsection (a), by substituting "the District of Columbia Judicial Retirement and Survivors Annuity Fund" for "such funds," "under the first sentence

of subsection (a)" for "from the fund," and "District of Columbia Judicial Retirement and Survivors Annuity" for "fund" in subsection (b), and by inserting "(including moneys in the District of Columbia Judges' Retirement Fund)" in subsection (d).

Effective date. Section 124 (d) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 11-1571. Periodic increases; existing rights.

(a) The retirement salary of any judge, or the annuity of any person based upon the service of a judge, who, on the effective date of any increase which, after the effective date of this section, becomes payable under the provisions of section 8340 (b) of title 5, United States Code, is receiving such salary or annuity, or who, before the next such increase first becomes payable under such section, receives such salary or annuity, either (1) under the provisions of this subchapter, or (2) under the provisions of section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, shall be increased on the effective date of the increase by a percentage equal to the percentage of such increase under section 8340 of title 5, United States Code.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, (§ 252 (a), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting "or who, before the next such increase first becomes payable under such section, receives such salary or annuity, either" in subsection (a).

Effective date. Section 252 (b) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

CHAPTER 19. — JURIES AND JURORS

§ 11-1903. Grand jury; additional grand jury.

NOTES TO DECISIONS

Section constitutional. — Provision of this section that permits grand juries attached to either the United States District Court or the Superior Court to return indictments for violations of both federal or local criminal statutes is constitutional. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

“Take cognizance” includes to return indictment. — Argument that this section permits a grand jury only to “take cognizance” of a matter ultimately proper before another court but not to return an indictment with respect to such matters was overly literal and unpersuasive. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Superior Court grand juries have powers comparable to federal grand juries. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Including power to subpoena for lineup. — A grand jury may subpoena a suspect and direct him to stand in a lineup. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And to subpoena extraterritorially. — Superior Court grand jury had the power to direct subpoenas to persons beyond the territorial borders of the District. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

CHAPTER 25. — ATTORNEYS

§ 11-2501. Admission to bar; regulations; prior admission.

NOTES TO DECISIONS

Court of Appeals has exclusive jurisdiction over review of admission examinations. — Since admission to the Bar of the District of Columbia is governed by the rules of the Court of Appeals, that court has exclusive jurisdiction to entertain a petition for review of admission examinations, and the Superior Court properly dismissed such a petition for lack of jurisdiction. *Kennedy v. Educational Testing Serv., Inc.* (D.C. 1978, 393 A.2d 523).

Antitrust laws do not apply to Court of Appeals’ promulgation of bar admission rules. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

Federal noninterference into bar admission matters. — Absent compelling circumstances, the federal courts follow a general rule of noninterference into matters of bar admissions. *Hickey v. District of Columbia Court of Appeals* (1978, 457 F. Supp. 584).

§ 11-2502. Censure, suspension, or disbarment for cause.

NOTES TO DECISIONS

Court order required. — Disbarment, suspension, or censure of any attorney can be made effective only upon

an order of the Court of Appeals. *In re Dwyer* (D.C. 1979, 399 A.2d 1).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

NOTES TO DECISIONS

Court order required. — Disbarment, suspension, or censure of an attorney can be made effective only upon an

order of the Court of Appeals. *In re Dwyer* (D.C. 1979, 399 A.2d 1).

CHAPTER 26. — REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made an appropriation for public safety and justice: Provided, that funds appropriated for expenses under the Criminal Justice Act of 1974 (Pub. L.

93-412) for fiscal year 1980 shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1975.

NOTES TO DECISIONS

Underlying purpose of this section is to insure that persons charged with crimes in the District of Columbia who are financially unable to obtain an adequate defense are provided with legal representation. *Thompson v. District of Columbia* (D.C. 1979, 407 A.2d 678).

Implementation plan is mandatory in application; that is, in all criminal cases specified under this section an accused who appears in court without counsel shall be informed that he has the right to be represented by appointed counsel if he is financially unable to obtain counsel, and it is the duty of the court or the Criminal Justice Act office to determine whether a person appearing without counsel is eligible for representation. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Either the court or its authorized representative may make findings of eligibility. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Amount of appointee's compensation.— The judges of the Superior Court administer this chapter and determine the amount of compensation each appointee will receive. *Thompson v. District of Columbia* (D.C. 1979, 407 A.2d 678).

Cited in *Pierce v. United States* (D.C. 1979, 402 A.2d 1237); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385); *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

§ 11-2602. Appointment of counsel.

NOTES TO DECISIONS

Cited in *Gregory v. United States* (D.C. 1978, 393 A.2d 132); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2603. Duration and substitution of appointments.

NOTES TO DECISIONS

Attorney may not be removed arbitrarily. — Once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and his counsel, although gross incompetence or physical incapacity of counsel or contumacious conduct that cannot be cured by a citation for contempt may justify the court's removal of an

attorney even over the defendant's objection. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Or for mere disagreement over conduct of defense. — Mere disagreement as to the conduct of a defense is not sufficient to permit the removal of any attorney. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2604. Payment for representation.

NOTES TO DECISIONS

Intention of this section is that attorneys appointed thereunder be reasonably and fairly compensated. *Thompson v. District of Columbia* (D.C. 1979, 407 A.2d 678).

Judicial discretion determines a claim under this section. *Thompson v. District of Columbia* (D.C. 1979, 407 A.2d 678).

Rate of compensation. — This section is written in terms of maximums and does not establish a specific rate of compensation. *Thompson v. District of Columbia* (D.C. 1979, 407 A.2d 678).

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2605. Services other than counsel.

NOTES TO DECISIONS

Subsection (a) is identical to 18 U.S.C. § 3006A (e) (1) which provides for defense-related services in the federal district courts. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Reason for ex parte proceeding. — The requirement that eligibility and need for a defense service be determined in an ex parte proceeding affords the defendant an opportunity to present his request to the trial

court without prematurely disclosing the merits of his defense to the prosecution. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Psychiatric assistance in preparing insanity defense comes within subsection (a). *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Purpose of psychiatric expert under subsection (a) is to assist defense counsel in determining whether there is a

basis for a substantial defense of sanity and in preparing and presenting such a defense if after examination it appears justified. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Defendant does not always have the right to a psychiatrist under subsection (a). *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

A court need not appoint a psychiatrist if there is absolutely no reason to think that a plea of insanity would be successful or if a reasonable attorney would not pursue an insanity defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

The court may deny a request for a psychiatrist under subsection (a) if the defendant has received sufficient psychiatric assistance from other sources to develop an adequate defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Factors trial court should consider in evaluating request for psychiatrist. — In determining whether psychiatric assistance is necessary, the trial court should consider the defendant's prior psychological history, any reports concerning his mental state, the opinion of those who have had an opportunity to view him, the record and the judge's own evaluation of the defendant's demeanor. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

In making the determination of whether the services of a psychiatric expert are "necessary for an adequate defense," the trial court should tend to rely on the

judgment of defense counsel who has the primary duty of providing an adequate defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Character of expert psychiatric services provided under this section. — This section goes beyond provisions such as § 24-301 (a), which provides for a mental examination pursuant to an order of the court, in that a psychiatric expert appointed under this section is not primarily an aide to the court but can be a partisan witness, and his conclusions and opinions need not be reported to either the court or the prosecution. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Counsel should state facts giving rise to need for services. — Although subsection (a) does not require that an application be accompanied by a supporting memorandum, defense counsel should state in the application or a memorandum the facts giving rise to a defendant's need for a particular defense service, thereby affording the trial court an opportunity to weed out frivolous requests without the need for a hearing. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

\$300 limit absent showing by counsel. — Unless defense counsel can show in his application some justification for payments in excess of \$300, the trial court should limit compensation to that amount. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Cited in *Wilson v. United States* (D.C. 1979, 403 A.2d 333); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2606. Receipt of other payments.

NOTES TO DECISIONS

Seeking dual compensation not required for violation. — Trial court properly refused to instruct the jury that a defendant-attorney must have sought dual compensation in order to be convicted of violating this section. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Instruction on entitlement to compensation proper. — Where attorney prosecuted for violating this section knew that the Criminal Justice Act office had found the defendant eligible for representation, that a document

reflecting that determination was before the court and that he would be compensated for his services if he submitted a voucher when the case was completed, the jury could have found him "entitled" to receive compensation within the meaning of this section, and the court did not err in instructing to that effect. *Gregory v. United States* (D.C. 1978, 393 A.2d 132).

Cited in *In re Dwyer* (D.C. 1979, 399 A.2d 1); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2607. Preparation of Budget.

NOTES TO DECISIONS

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 11-2608. Authorization of appropriations.

NOTES TO DECISIONS

Cited in *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

TITLE 12. — RIGHT TO REMEDY

Cross references. For recovery of medical care expenses for police and firemen, see § 4-1001 et seq. For reciprocal recovery of taxes, see § 47-341 et seq.

| Chap. | Sec. |
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| 1. Abatement and Revivor | 12-101 |
| 3. Limitation of Actions | 12-301 |

CHAPTER 1.—ABATEMENT AND REVIVOR

Sec.
12-101. Survival of rights of action.

§ 12-101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Aug. 2, 1978, D.C. Law 2-95, § 2, 25 DCR 1270.)

Effect of Amendment.
1978 — Act Aug. 2, 1978, D.C. Law 2-95, amended section by deleting “action survives” and inserting in lieu thereof “action, for all such cases, survives” and by deleting the second sentence.
Legislative History of Law 2-95. Law 2-95 was introduced in Council and assigned Bill No. 2-52, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 18, 1978 and

May 2, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-199 and transmitted to both Houses of Congress for its review.
Effective date. Section 4 of Act Aug. 2, 1978, D.C. Law 2-95, 25 DCR 1270, provided that the 1978 amendment to the section shall only apply with respect to all actions, proceedings and matters commenced in any administrative or judicial forum on or after the effective date of D.C. Law 2-95.

NOTES TO DECISIONS

Negligent conduct resulting in death gives rise to two independent rights of action under District of Columbia law, one under the Wrongful Death Act (§ 16-2701 et seq.) and one under the Survival Act (§ 12-101 et seq.), upon each of which damages may be sought. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Basis for section’s enactment. — This section was enacted by Congress pursuant to its constitutional power and responsibility. *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521).
Congressional policy. — This section, enacted by Congress, represents a congressionally determined policy governing survival of actions. *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521).
Purpose of section. — This section is designed to place the deceased’s estate in the position it would have been in had the deceased’s life not been cut short. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Heirs or next of kin are entitled to recognition as legal representatives in a survival action on behalf of a decedent’s estate. *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521).
Damages awarded. — Before enactment of the 1978 amendment to this section, court held that in an action under this section damages are limited to compensation to the estate itself, for the loss of prospective economic benefit in the form of the decedent’s prospective net

lifetime earnings discounted to present worth. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
Before 1978 amendment, court held that proper recovery under this section is based on the decedent’s probable net future earnings reduced by the amount he would have used to maintain himself and those entitled to recover under the Wrongful Death Act (§ 16-2701 et seq.). *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).
Punitive damages. — This section allows recovery of punitive damages under appropriate circumstances. *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521).
Task of projecting lost earnings lends itself to clarification by expert testimony because it involves the use of statistical techniques and requires a broad knowledge of economics. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
When appellate court will order new trial on damages. — When a jury finds a particular quantum of damages and the trial court refuses to disturb the jury’s findings on a motion for a new trial, an appellate court will order a new trial only when the award is so inadequate as to indicate prejudice, passion or partiality on the part of the jury or where it must have been based on oversight, mistake or consideration of an improper element. *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).
Choice of law. — The District of Columbia has increasingly applied an “interest analysis” approach to choice of law questions in tort cases in general and

wrongful death cases in particular. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Situs of injury. — This section is not, by its terms, limited to injuries incurred in the District of Columbia. *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521).

Action precluded by res judicata. — A Virginia judgment under the Virginia wrongful death statute was res judicata and precluded further recovery under this section because both suits were based on the same grouping of operative facts, the Virginia wrongful death action provided a single and exclusive remedy and the plaintiff had had a full opportunity to litigate the choice of law issue in the Virginia federal court. *Semler v.*

Psychiatric Inst. of Wash., D.C., Inc. (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

And by estoppel. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from subsequently claiming that District law rather than Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Cited in *Quin v. George Washington Univ.* (D.C. 1979, 407 A.2d 580); *Chandler v. District of Columbia* (D.C. 1979, 404 A.2d 964); *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384).

CHAPTER 3.—LIMITATION OF ACTIONS

Sec.

12-301. Limitation of time for bringing actions.

12-302. Disability of plaintiff.

§ 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

* * * * *

(9) For a violation of the District of Columbia Mental Health Information Act of 1978 (D.C. Code, sec. 6-1611 et seq.) — 1 year.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-136, § 805 (c), 25 DCR 5055.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-136, amended section by adding paragraph (9).

Legislative History of Law 2-136. See note to § 6-1611.

NOTES TO DECISIONS

In General. — Policies of protecting notice and securing ultimate peace between adversaries without unjustly barring claims form the basis for the general rule that the statute of limitations begins to run only “from the time the right to maintain the action accrues,” i.e., from the time that all the elements of a cause of action exist. *S. Freedman & Sons v. Hartford Fire Ins. Co.* (D.C. 1978, 396 A.2d 195).

Statute of limitations applicable in federal securities fraud cases. — When a private action is brought under § 10(b) of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78j (b)) and § 17 (a) of the federal Securities Act of 1933 (15 U.S.C. § 77q (a)), the two-year blue sky limitations period of § 2-2413 (e) applies rather than subsection (8) of this section. *Wachovia Bank & Trust Co. v. National Student Marketing Corp.* (1978, 461 F. Supp. 999).

Period for interference with expected economic advantages. — Alleged malicious interference with efforts to develop property, by false and malicious statements, constitutes not defamation but interference with expected economic advantages, and thus the three-year limitation period applies rather than the one-year period for defamation. *Carr v. Brown* (D.C. 1978, 395 A.2d 79).

Limitation of actions for fraud. — Actions involving allegations of fraud must be brought within three years from the time the fraud either is discovered or reasonably should have been discovered. *King v. Kitchen Magic, Inc.* (D.C. 1978, 391 A.2d 1184).

Tort action accrues on date of injury. — The statute of limitations begins to run, as to a tort, on the date of the injury. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

A cause of action for ordinary negligence accrues when the plaintiff suffers injury. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Same principles govern accrual of legal malpractice action as govern other negligence actions. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Accrual of action for nondelivery of property sold. — Where the parties to a sales contract intended the physical delivery of the subject property to be on demand, the buyer’s cause of action accrued only upon the refusal of the collector of the seller’s estate to relinquish possession of the property after the seller’s death. *Neves v. Riley* (1978, 447 F. Supp. 306).

For conversion by lessee. — Where possession of property by a lessee could have been rightful during the lease term and remained rightful until expiration of the

term, any conversion of the property would not have occurred until the expiration of the lease created an implied demand for its return, and thus the statute of limitations on the lessor's action for conversion would not commence to run as to the lessee until expiration of the lease. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

For lessee's breach of contract. — Where lessee had contracted to restore premises it had leased to its original condition prior to the termination or renewal of the lease, the statute of limitations for breach of contract did not commence running until the expiration of the leasehold even though the lessee had vacated the premises prior to that date, where its release of two keys to the lessor and his acceptance thereof did not constitute a modification of the lease and where it was not asserted that no other keys remained in the lessee's possession that the lessor took possession so as to prevent reentry by the lessee. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

This section begins to run when a contract is breached. *Western Union Tel. Co. v. Massman Constr. Co.* (D.C. 1979, 402 A.2d 1275).

Tolling the statute by fraudulent concealment. — Fraudulent concealment of the existence of a cause of action tolls the running of a conventional statute of limitations for as long as the concealment endures. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

The statute of limitations is tolled where the existence of a cause of action for legal malpractice has been fraudulently concealed by the attorney's affirmative misrepresentations. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Defense to claim of fraudulent concealment. — A defense to a claim that fraudulent concealment of the

existence of a cause of action tolled the statute of limitations is that the plaintiff knew, or by the exercise of due diligence could have known, that he may have had a cause of action. *Weisberg v. Williams, Connolly & Califano* (D.C. 1978, 390 A.2d 992).

Barred cause of action raised as defense. — Although this section barred suit for punitive damages for fraud, it did not bar the defrauded parties from raising the fraud as a defense to a judicial foreclosure or to a suit for payment under the contract. *King v. Kitchen Magic, Inc.* (D.C. 1978, 391 A.2d 1184).

Unreasonable time lapse barred suit for constructive trust. — With respect to implied or constructive trusts, unless there has been a fraudulent concealment of the cause of action an unreasonable lapse of time is a complete bar in equity, as at law, and where a plaintiff waited six years to bring an action seeking imposition of a constructive trust the unreasonable delay defeated his action. *Watwood v. Yambrusic* (D.C. 1978, 389 A.2d 1362).

Application of laches. — In measuring the reasonableness of delay for purposes of the application of the doctrine of laches, the 15-year period for adverse possession may offer helpful, if not binding, guidance. *Martin v. Carter* (D.C. 1979, 400 A.2d 326).

Cited in *McShain, Inc. v. L'Enfant Plaza Properties, Inc.* (D.C. 1979, 402 A.2d 1222); *Hall v. Cafritz* (D.C. 1979, 402 A.2d 828); *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.* (D.C. 1979, 402 A.2d 31); *Breen v. District of Columbia* (D.C. 1979, 400 A.2d 1058); *American Univ. Park Citizens Ass'n v. Burka* (D.C. 1979, 400 A.2d 737); *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

§ 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

- (1) under 18 years of age; or
- (2) noncompos mentis; or
- (3) imprisoned —

he or his proper representative may bring action within the time limited after the disability is removed.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-61, amended section by striking "21" and inserting in lieu thereof "18" in paragraph (1) of subsection (a).

Legislative History of Law 2-61. Law 2-61 was introduced in Council and assigned Bill No. 2-165, which

was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively. Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-131 and transmitted to both Houses of Congress for its review.

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

NOTES TO DECISIONS

- I. General Consideration.
- II. Adequacy of Notice Given.
- III. Police Reports.

I. GENERAL CONSIDERATION.

Intent of section. — This section was intended to ensure that District officials would be given reasonable notice of an accident so that the facts may be ascertained and, if possible, the claim adjusted. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

The rationale underlying the notice requirement is to (1) protect the District against unreasonable claims and (2) give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803); *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

This section was intended to serve the same function as numerous comparable state statutes requiring notice to municipalities of events which might result in traditional tort suits against them. *Lively v. Cullinane* (1976, 451 F. Supp. 999).

Section applies to intentional torts. *Breen v. District of Columbia* (D.C. 1979, 400 A.2d 1058).

Section strictly construed. — Since this section is in derogation of the common law, it must be strictly construed. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

While precise exactness is not required in the notice statement, the requirements of the statute are nevertheless to be strictly construed. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

The requirements of this section will be strictly construed to effect its legislative purpose. *Washington v. District of Columbia* (D.C. 1979, 407 A.2d 702).

Compliance with section is condition precedent. — As a condition precedent to maintaining a suit against the District, a claimant must comply with the provisions of this section. *Washington v. District of Columbia* (D.C. 1979, 407 A.2d 702).

Compliance with notice requirement is mandatory. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

The notice requirements of this section are mandatory; if there is no timely, written notice, a plaintiff is precluded from litigating his claim. *Breen v. District of Columbia* (D.C. 1979, 400 A.2d 1058).

The time period prescribed by this section for giving written notice is mandatory. *Eskridge v. Jackson* (D.C. 1979, 401 A.2d 986).

Section gives District a litigative advantage over an ordinary civil defendant who may learn of claims against him for unliquidated damages at any time within the statute of limitations period. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

District need not claim to have been prejudiced by failure of appellant to give adequate notice for recovery to be barred by lack of adequate notice. *Washington v. District of Columbia* (D.C. 1979, 407 A.2d 702).

Notice required where District unaware of injury from known wrongful act. — This section is applicable where the District itself is in breach of a duty but where, although necessarily aware of the breach, the District is not necessarily aware of the injury produced by the breach. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

And where District answerable under respondeat superior. — The requirements of this section must be met where a claim arises out of tortious conduct of employees of the District to which the District, as the superior, must respond. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

But not where constitutional violation alleged in federal forum. — This section did not apply to an action in which the plaintiff alleged infringement of constitutional rights and sought redress under federal law

and in a federal forum under federal question jurisdiction. *Lively v. Cullinane* (1976, 451 F. Supp. 999).

II. ADEQUACY OF NOTICE GIVEN.

Oral communication does not satisfy notice requirement of section. *Washington v. District of Columbia* (D.C. 1979, 407 A.2d 702).

Adequate notice by letter and verbal complaints. — In suit by lessor for breach by the District of a contractual duty under its lease and for conversion of the lessor's property, the requirements of this section were met where the lessor in conversations with personnel of the Department of General Services complained of damage to the leased premises both before and after expiration of the lease term and the lessor's attorney sent a letter to the Assistant Director for Buildings Management, with a copy to an assistant corporation counsel, giving notice to the District to vacate the premises and stating that the lessor intended to prosecute his claims under the lease. *Shehyn v. District of Columbia* (D.C. 1978, 392 A.2d 1008).

Membership in plaintiff class of former suit not sufficient notice. — Plaintiffs' claim that the District was adequately informed of their alleged injuries by a complaint in another lawsuit against District officials, instituted on behalf of a class which included the present plaintiffs, was not so compelling that a federal appellate court would by mandamus order a district judge to allow the plaintiffs' suit against the District. *In re Knable* (1977, 570 F.2d 957, 187 U.S. App. D.C. 48).

III. POLICE REPORTS.

Police report must give time, place, cause and circumstances. — Although the second sentence of this section does not expressly incorporate the requirements of the first sentence concerning notice of the approximate time, place, cause and circumstances of an incident, incorporation of those specific requirements is necessary in order for the police report provision to be consistent with the statute's purpose of assuring adequate information for the proper and efficient disposition of claims. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Police reports are substitutes for actual notice given, and where such facts as would give notice are not contained in the report, this section is not satisfied. *Braxton v. National Capital Hous. Auth.* (D.C. 1978, 396 A.2d 215).

But technical legal document not required. — Although a police report, by its nature, may not fully reflect every salient fact concerning the potential liability of the District with the same degree of clarity and specificity as a document drawn by an attorney, a report provides sufficient notice to satisfy the statutory requirement if it recites facts from which it could be reasonably anticipated that a claim against the District might arise. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Considerations in determining adequacy of notice. — The determination of whether a particular police report or series of reports constitutes statutory notice to the District can only be reached after consideration of the particular facts of the case, the nature of the report itself and the objectives sought to be attained by the notice provision. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

The sufficiency of a police report as notice under this section depends not on reliability, but on whether it sets forth the substance of the information which would have been required in a written notice of claim. *Eskridge v. Jackson* (D.C. 1979, 401 A.2d 986).

FBI report not equivalent of police report. — An FBI report of an incident giving rise to a claim in tort against the District is not an equivalent of a Metropolitan Police Department report permitted as an exception under this

section when the claimant fails to allege actual receipt of the FBI report by District officials. *Eskridge v. Jackson* (D.C. 1979, 401 A.2d 986).

Police report supplied adequate notice. *Pitts v. District of Columbia* (D.C. 1978, 391 A.2d 803).

Cited in *Keith v. Washington* (D.C. 1979, 401 A.2d 468); *Kelley v. Morris* (D.C. 1979, 400 A.2d 1045); *Marshall v. District of Columbia* (D.C. 1978, 391 A.2d 1374).

TITLE 13.—PROCEDURE GENERALLY

| Chap. | Sec. |
|--|--------|
| 3. Process and Parties | 13-301 |
| 4. Civil Jurisdiction and Service Outside the District of Columbia | 13-401 |

CHAPTER 3.—PROCESS AND PARTIES

Subchapter II.—Service of Process; Legal Representatives

§ 13-334. Service on foreign corporations.

NOTES TO DECISIONS

“Doing business” means any continuing corporate presence in the forum directed at advancing a corporation’s objectives. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Parent doing business through subsidiary. — If a subsidiary is merely an agent through which the parent conducts business in a jurisdiction, then the subsidiary’s business will be viewed as that of the parent and the latter will be said to be doing business in the jurisdiction through the subsidiary. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Effect of doing business on extent of amenability to service. — As long as a foreign corporation is “doing business” in the District, it is amenable to service under this section regardless of any connection between the claim for relief and the District. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Results in narrow construction of “doing business”. — The “doing business” standard must be construed narrowly in cases where the claim for relief bears no relation to the contacts with the District which form the jurisdictional base. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Business activities insufficient. — Business activities consisting of purposefully making a flight timetable

available in the District through the actions of another airline and regularly placing advertisements in the so-called joint timetable were insufficient to bring the defendant within the jurisdiction of the District’s courts on a claim having absolutely no connection with the District. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Commercial relations with federal government may support jurisdiction. — Corporations may be subjected to personal jurisdiction in the District when their contacts with the District involve substantial commercial relations with the federal government acting in its proprietary capacity. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Although some of a foreign corporation’s activities involved contacts with the government in its nonproprietary role, personal jurisdiction over the company was proper where it did a substantial amount of business in the District which directly involved commercial contacts with the government as purchaser of the corporation’s products. *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Cited in *Union Storage Co. v. Knight* (D.C. 1979, 400 A.2d 316).

CHAPTER 4.—CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

Subchapter I.—General Provisions

§ 13-401. Relation to other provisions of law.

NOTES TO DECISIONS

Cited in *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

Subchapter II.—Bases of Personal Jurisdiction Over Persons Outside the District of Columbia

§ 13-423. Personal jurisdiction based upon conduct.

NOTES TO DECISIONS

Service of process necessary. — Before the Superior Court of the District of Columbia may exercise personal jurisdiction over a nonresident defendant, service of process over that nonresident must be authorized by this section. *Berwyn Fuel, Inc. v. Hogan* (D.C. 1979, 399 A.2d 79).

Intent of section. — In enacting this section, Congress intended to provide District of Columbia courts with in personam jurisdiction equivalent in scope to that in effect in the neighboring states of Maryland and Virginia. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368), petition for rehearing denied, (D.C. 1979, 398 A.2d 787).

Due process requires that a nonresident defendant have certain minimum contacts with the forum so the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Meyers v. Smith* (1978, 460 F. Supp. 621).

There must be some act by which the nonresident defendant purposely avails himself of the privilege of conducting activities in the forum state, invoking the benefits and protections of its laws. *Meyers v. Smith* (1978, 460 F. Supp. 621).

Subsection (a)(1) has been interpreted broadly, and its reach is limited only by due process considerations. *Meyers v. Smith* (1978, 460 F. Supp. 621); *Rose v. Silver* (D.C. 1978, 394 A.2d 1368), petition for rehearing denied, (D.C. 1979, 398 A.2d 787).

Defendants transacting business through agent. — Where an attorney was hired by a foreign corporation and its president and sent to the District of Columbia to establish an office, negotiate on behalf of the corporation with the federal Food and Drug Administration and if necessary litigate against the FDA, the corporation and its president were transacting business in the District through an agent and accordingly had established the minimum contacts necessary for personal jurisdiction over them consistent with due process. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368), petition for rehearing denied, (D.C. 1979, 398 A.2d 787).

Government contacts exemption. — In view of the “transacting any business” standard in this section, the government contacts principle, which exempts one from

assertions of personal jurisdiction in the District if the sole contact with the District consists of dealing with a federal instrumentality, is now based solely upon the First Amendment whenever the asserted contacts are covered by the long-arm statute and are sufficient to withstand a traditional due process attack. *Rose v. Silver* (D.C. 1978, 394 A.2d 1368), petition for rehearing denied, (D.C. 1979, 398 A.2d 787).

Claims must arise from transaction providing basis for jurisdiction. — This section requires some affirmative act by which a defendant brings itself within the jurisdiction and establishes minimum contacts, and jurisdiction is limited to claims arising from the particular transaction of business which provides the basis for jurisdiction. *Berwyn Fuel, Inc. v. Hogan* (D.C. 1979, 399 A.2d 79); *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

But may also address activities outside District. — The limitation in this section that a claim for relief must arise from the transaction of business in the District is meant to prevent the assertion of claims in the forum that do not bear some relationship to the acts in the forum relied upon to confer jurisdiction, but once a claim is related to acts in the District, this section does not require that the scope of the claim be limited to activity within the District. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Although only a portion of a plaintiff’s sales occurred in the District, the court had jurisdiction to entertain his suit for commissions on total sales, including those occurring in other states. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

United States District Court is not confined by the jurisdictional limits of this section. *Brink’s, Inc. v. Board of Governors of Fed. Reserve Sys.* (1979, 466 F. Supp. 116).

Causing injury to American citizens abroad would be insufficient to satisfy the requirements of this section. *Upton v. Empire of Iran* (1978, 459 F. Supp. 264).

Contacts sufficient. — *Meyers v. Smith* (1978, 460 F. Supp. 621).

Cited in *Briggs v. Goodwin* (1977, 569 F.2d 1, 186 U.S. App. D.C. 170).

§ 13-425. Inconvenient forum.

NOTES TO DECISIONS

Plaintiff’s choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Especially if plaintiff is District resident. — Only under convincing circumstances should a trial court dismiss on grounds of forum non conveniens a suit brought by a resident of the District. *Washington v. May Dep’t Stores* (D.C. 1978, 388 A.2d 484).

But plaintiff’s status not always determinative. — A plaintiff’s status as a resident of the District of Columbia is an important factor in determining the propriety of the forum but would not necessarily preclude dismissal of his

suit on forum non conveniens grounds. *Washington v. May Dep’t Stores* (D.C. 1978, 388 A.2d 484).

District of Columbia forum upheld. — Suit was of local interest where it arose from an incident in Maryland but the plaintiff was a resident of the District of Columbia and the defendant, though a foreign corporation, had long operated its stores in the District, and the public interest was served best by conducting the suit in the District since even though Maryland law would govern the tortious conduct which allegedly occurred there, the legal issues involved were not complex, the District courts were sufficiently acquainted with Maryland tort law, the

defendant's witnesses, though Maryland residents, were all employees of its stores and there was no evidence that the plaintiff had brought suit in the District for purposes of harassment. *Washington v. May Dep't Stores* (D.C. 1978, 388 A.2d 484).

Questions of forum non conveniens are committed to sound discretion of trial court and will be reversed on appeal only upon a clear showing of an abuse of discretion.

Cohane v. Arpeja-California, Inc. (D.C. 1978, 385 A.2d 153).

Case should not have been dismissed in midtrial on grounds of forum non conveniens where neither public nor private interests were thereby served. *Cohane v. Arpeja-California, Inc.* (D.C. 1978, 385 A.2d 153).

Cited in *Ramamurti v. Rolls-Royce Ltd.* (1978, 454 F. Supp. 407).

TITLE 14.—PROOF

| Chap. | Sec. |
|--|--------|
| 1. Evidence Generally; Depositions | 14-101 |
| 3. Competency of Witnesses | 14-301 |

CHAPTER 1.—EVIDENCE GENERALLY; DEPOSITIONS

§ 14-102. Impeachment of own witness; surprise.

NOTES TO DECISIONS

This section is the statutory basis for the use of prior inconsistent statements. *In re L.D.O.* (D.C. 1979, 400 A.2d 1055). Cited in *Johnson v. United States* (D.C. 1978, 387 A.2d 1084).

CHAPTER 3.—COMPETENCY OF WITNESSES

Sec.
14-307. Physicians.

§ 14-302. Testimony against deceased or incapable person.

NOTES TO DECISIONS

Cited in *Neves v. Riley* (1978, 447 F. Supp. 306).

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

NOTES TO DECISIONS

In general. — A prior conviction may not be introduced by the prosecution to prove that a defendant is guilty of the crime with which he is charged, but once the defendant testifies his credibility may be impeached by reference to his prior convictions. *Fields v. United States* (D.C. 1978, 396 A.2d 522).
When the defendant elects to take the stand, he may be impeached by evidence of his prior convictions. *Middleton v. United States* (D.C. 1979, 401 A.2d 109).
Section compared to federal rule. — This section calls for a broader interpretation of “dishonesty or false statement” than the identically worded Fed. R. Evid. 609 (a) (2). *Bates v. United States* (D.C. 1979, 403 A.2d 1159).
Unlawful entry is an impeachable conviction involving dishonesty as contemplated by this section. *Bates v. United States* (D.C. 1979, 403 A.2d 1159).
Convictions timely for purposes of impeachment. — Where defendant was convicted of robbery in 1952, receiving a sentence of three to fifteen years, and of robbery in 1963, receiving a sentence of five to fifteen years, both convictions were admissible for impeachment purposes in defendant’s 1976 trial for armed robbery. *Glass v. United States* (D.C. 1978, 395 A.2d 796).
Evidence of prior convictions is admissible only as bearing on issue of witness’ credibility and must not be allowed improperly to influence the determination of guilt. *Middleton v. United States* (D.C. 1979, 401 A.2d 109).
Due process requires production of government witnesses’ impeachable convictions. — Due process as elaborated in *Brady v. Maryland* (1963, 373 U.S. 83, 83 S.

Ct. 1194, 10 L. Ed. 2d 215) and subsequent case law requires at-trial production of the impeachable convictions of government witnesses, at least to the extent of the government’s knowledge about them, and failure to produce these convictions may necessitate a new trial if the suppressed evidence might have affected the outcome. *Lewis v. United States* (D.C. 1978, 393 A.2d 109).
Even suppressed juvenile records. — Due process requires disclosure of a requested but suppressed juvenile record when the court concludes that its use for impeachment under this section might have affected the outcome of the trial. *Lewis v. United States* (D.C. 1978, 393 A.2d 109).
Limited admissibility of facts of prior crimes. — While the fact of a prior conviction is admissible for impeachment purposes, the facts of the crime are admissible only to the extent that they are independently relevant to the issues at trial, and they are not admissible to prove a general criminal disposition. *Ward v. United States* (D.C. 1978, 386 A.2d 1180).
Limits on manner of impeachment. — To minimize the risk of jury misuse of other crimes evidence, the prosecutor must not impeach the defendant with prior convictions in a manner which suggests to the jury that because of his prior criminal acts, the defendant is guilty of the crimes charged. *Fields v. United States* (D.C. 1978, 396 A.2d 522).
In prosecution for armed kidnapping, armed robbery, assault with a dangerous weapon and carrying a pistol without a license questions concerning defendant’s prior

conviction for unregistered possession of a firearm, asked by the prosecutor immediately after defendant had denied possessing a gun on the occasion of the offense charged, likely gave the jury the impression that evidence of the prior conviction was being offered to rebut that denial, and such questions constituted plain error. *Fields v. United States* (D.C. 1978, 396 A.2d 522).

Rehabilitation of credibility by explanation of conviction. — If one were lawfully on premises exercising

First Amendment rights, then refused to leave upon lawful demand to do so, and was thereupon convicted of unlawful entry under § 22-3102, he or she would have an opportunity to rehabilitate credibility by making a “limited explanation” of the circumstances supporting the conviction if the government sought to use it for impeachment. *Bates v. United States* (D.C. 1979, 403 A.2d 1159).

§ 14-306. Husband and wife.

NOTES TO DECISIONS

Subsection (a) inapplicable in Federal courts. — In U.S. Court of Appeals tax case in which the evidentiary rules of the District of Columbia District Court applied, subsection (a) of this section was held not to establish a

rule for the District of Columbia federal courts since Congress had not clearly so provided and other federal courts did not recognize so broad a privilege. *Ryan v. Commissioner* (1977, 568 F.2d 531).

§ 14-307. Physicians.

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by the District of Columbia Mental Health Information Act of 1978 (D.C. Code, sec. 6-1611 et seq.) may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-136, § 805(b), 25 DCR 5055.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-136, amended section by inserting “or mental health professional as defined by the District of Columbia Mental Health Information Act of 1978 (D.C. Code, sec. 6-1611 et seq.)”

and by substituting “client” for “patient” twice in subsection (a).

Legislative History of Law 2-136. See note to § 6-1611. Section referred to in section. 32-362.

NOTES TO DECISIONS

Authorization of disclosure on insurance application waived privilege. — Where an application for insurance contained an authorization to the applicant’s physicians to disclose any information requested by the insurance company, it was not necessary that the authorization specifically refer to waiver of the physician-patient privilege to constitute a valid waiver of the privilege, for the signing of the authorization necessarily negated the expectation of protected confidentiality which the privilege is intended to assure. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Only testimony in court violates privilege. — Statements made by a physician to a newspaper reporter

about a patient’s drug use did not violate the physician-patient privilege because they did not constitute in-court testimony. *Logan v. District of Columbia* (1978, 447 F. Supp. 1328).

Federal court declined to recognize cause of action based solely on physician’s unauthorized disclosure of information obtained through the physician-patient relationship. *Logan v. District of Columbia* (1978, 447 F. Supp. 1328).

Cited in *Ryan v. Commissioner* (1977, 568 F.2d 531).

§ 14-309. Clergy.

NOTES TO DECISIONS

Cited in *Ryan v. Commissioner* (1977, 568 F.2d 531).

TITLE 15.—JUDGMENTS AND EXECUTIONS; FEES AND COSTS

| Chap. | Sec. |
|---|--------|
| 1. Judgments and Decrees | 15-101 |
| 3. Enforcement of Judgments and Decrees | 15-301 |

CHAPTER 1.—JUDGMENTS AND DECREES

§ 15-101. Enforceable period of judgments; expiration.

NOTES TO DECISIONS

Life of recorded and unrecorded judgments is equal under this section. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Effect of Social Services Amendments Act. — The period in which a judgment is in force is unaffected by a judgment debtor's wages being immune from garnishment, and therefore the effect of the Social Services Amendments Act of 1974 is irrelevant to the application of this section and § 15-302. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Child support payment. — Each child support payment becomes a separate judgment as of the date the payment falls due and the life of each judgment is the 12-year period specified in this section, irrespective of whether the judgments are or are not recorded. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-102. Lien of judgment, decree, or forfeited recognizance.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-108. Interest on judgment for liquidated debt.

NOTES TO DECISIONS

Similarity of section to common law. — The language of this section mandates an award of interest if the debt is liquidated, as does the common law. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Section 15-109 is inconsistent with this section to the extent that it authorizes interest only on the judgment from the date of judgment, rather than on the principal amount due from the date due until the date paid. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Prejudgment interest allowed as matter of law. — This section requires the allowance of prejudgment interest on liquidated debts as a matter of law. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Distinction between prejudgment interest and interest on judgment eliminated. — This section eliminates the traditional distinction between prejudgment interest and interest on the judgment itself in cases involving a liquidated debt where interest is payable by contract law or usage. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Purpose of imposing interest. — Interest is not imposed on a debtor's obligation in order to exact a penalty; it is imposed to compensate the creditor for the loss of the use of its money. *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

The purpose to be served in awarding interest is as compensation allowed by law for the use or forbearance of money or as damages for its improper retention. *Giant Good, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Contractual rate of interest controls. — Under this section the rate of interest agreed upon and fixed by the parties in the contract controls, rather than the statutory rate of interest specified in § 28-3302. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Fault or innocence of debtor. — If a debt is a liquidated one which meets the requisites of this section, then prejudgment interest shall be awarded regardless of the fault or innocence of the debtor. *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

Whether an unliquidated counterclaim bars interest on a liquidated debt depends on the extent of the plaintiff's breach, the conduct of the two parties, and other surrounding circumstances of the transaction. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Where unliquidated counterclaim is asserted against liquidated claim, interest is allowed only on the difference between the amount of the plaintiff's liquidated claim and the amount of defendant's counterclaim. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

§ 15-109. Interest on judgment for damages in contract or tort.

NOTES TO DECISIONS

Application of section. — This section is applicable to contract actions where no liquidated debt exists or where interest is not payable by contract or by law or usage. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

This section is inconsistent with § 15-108 to the extent that it authorizes interest only on the judgment from the date of judgment, rather than on the principal amount due from the date due until the date paid. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

CHAPTER 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

§ 15-301. Definition and applicability.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-302. Period during which writ of execution may issue; returnable period.

NOTES TO DECISIONS

Design of section. — This section is designed to pretermit the possibility of a stay preventing execution on the judgment during the prescribed three-year period. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Writ of execution is the means by which a judgment is satisfied. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Writ ordering child support payments is not a "writ of execution," governed by this section and § 15-305, but a writ of attachment, governed by § 16-543. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Unrecorded judgments. — This section does not govern the life of unrecorded judgments. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Effect of Social Services Amendments Act. — The period in which a judgment is in force is unaffected by a judgment debtor's wages being immune from garnishment, and therefore the effect of the Social Services Amendments Act of 1974 is irrelevant to the application of § 15-101 and this section. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-303. Alias writs.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-305. Issuance of writ after expiration of period.

NOTES TO DECISIONS

Writ ordering child support payments is not a "writ of execution," governed by § 15-302 and this section, but a

writ of attachment, governed by § 16-543. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-307. Lien of execution.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-308. Endorsement, by marshal, of date of receipt of writ.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-311. Property subject to levy.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-312. Levy on money and evidences of debt.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 15-318. Remedies of purchaser upon refusal to deliver possession.

NOTES TO DECISIONS

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

| Chap. | Sec. |
|---|---------|
| 3. Adoption | 16-301 |
| 5. Attachment and Garnishment | 16-501 |
| 7. Criminal Proceedings in the Superior Court | 16-701 |
| 9. Divorce, Annulment, Separation, Support, Etc. | 16-901 |
| 11. Ejectment and Other Real Property Actions | 16-1101 |
| 13. Eminent Domain | 16-1301 |
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| 23. Family Division Proceedings | 16-2301 |
| 25. Change of Name | 16-2501 |
| 27. Negligence Causing Death | 16-2701 |
| 29. Partition and Assignment of Dower | 16-2901 |
| 33. Quieting Title Obtained by Adverse Possession | 16-3301 |

CHAPTER 3.—ADOPTION

§ 16-302. Persons who may adopt.

NOTES TO DECISIONS

Cited in *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

§ 16-304. Consent.

NOTES TO DECISIONS

Abandonment must be proved by clear and convincing evidence, and an adoption will be granted without parental consent on grounds of abandonment only when the parent's conduct manifests an intention to be rid of all parental obligations and to forego all parental rights, because adoption without parental consent results in a drastic and permanent severing of one of the strongest and most basic of human relationships. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

"Abandonment" does not require leaving child on a doorstep nor ceasing to feel concern for the child. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Court must consider totality of circumstances in determining whether there has been an abandonment,

including the degree of parental love, care and attention. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Mere failure to support not decisive. — Parental failure to support a child is a factor to be considered in deciding whether there has been an abandonment, but where the parent is financially unable to render support the failure to do so is not voluntary and cannot constitute abandonment. *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Evidence sufficient to support finding of abandonment. — *In re C.E.H.* (D.C. 1978, 391 A.2d 1370).

Evidence sufficient that withholding of consent contrary to best interests of child. — *In re Douglas* (D.C. 1978, 390 A.2d 1).

§ 16-309. Adoption proceedings.

NOTES TO DECISIONS

Best interests of child are court's primary concern in an adoption proceeding. *In re Douglas* (D.C. 1978, 390 A.2d 1).

Appointment of counsel at government expense to represent interests of adoptee was not necessary where all of the interests of the adoptee were presented by the

witnesses who favored and those who opposed the adoption and the trial court conducted a meaningful interview with the adoptee in chambers. *In re Douglas* (D.C. 1978, 390 A.2d 1).

Evidence sufficient for entry of adoption decree. — *In re Douglas* (D.C. 1978, 390 A.2d 1).

§ 16-311. Sealing and inspection of records and papers.**NOTES TO DECISIONS**

Adult, married adoptee seeking her natural parents was entitled to evidentiary hearing to determine if her adoption records should be open to inspection. *In re C.A.B.* (D.C. 1978, 384 A.2d 679).

§ 16-312. Legal effects of adoption.**NOTES TO DECISIONS**

Cited in *John Doe v. Webster* (1979, 606 F.2d 1226, U.S. App. D.C.).

CHAPTER 5.—ATTACHMENT AND GARNISHMENT***Subchapter I.—Attachment and Garnishment Generally*****§ 16-501. Attachment before judgment; affidavit and bond.****NOTES TO DECISIONS**

Strict compliance with statutory procedures is required because a writ of attachment before judgment is a harsh and drastic remedy. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 16-502. Service of notice; publication.**NOTES TO DECISIONS**

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with this section and § 16-508 which require notice of a perfected levy rather than mere notice of the issuance of the writ. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Effect of delivery of writ to marshal and posting of property. — Where writ of attachment before judgment

was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by this section and § 16-508 so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

§ 16-507. Property subject to attachment; liens; priorities.**NOTES TO DECISIONS**

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment was issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate

lien on the defendant's property, but mere posting of the property did not comply with the notice procedures mandated by §§ 16-502 and 16-508 so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

§ 16-508. Attachment of real property.

NOTES TO DECISIONS

Section requires notice of perfected levy. — Where a writ of attachment before judgment was delivered to the marshal in April and a copy mailed to the defendant at the same time, but the levy was not perfected until the following February, mailing the copy to the defendant in June was insufficient to comply with § 16-502 and this section which require notice of a perfected levy rather than mere notice of the issuance of the writ. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Lien inchoate where defendant without effective notice of writ. — Where writ of attachment before judgment issued and marshal posted defendant's property in June but failed to sign and file the endorsement to the writ until the following February, delivery of the writ to the marshal did create an inchoate lien on the defendant's

property, but mere posting of the property did not comply with the notice procedures mandated by § 16-502 and this section so that the defendant had no effective notice of the writ until it had been filed and published. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Bona fide purchaser took free of attachment where no effective notice. — Where a bona fide purchaser took property by valid transfer without notice of a writ of attachment against the property, and the transfer occurred before the transferor himself had been given notice of a sufficiently levied writ of attachment, the purchaser took the property free of the writ which had been sought against the transferor, and the writ should have been quashed. *Jack Dev., Inc. v. Howard Eales, Inc.* (D.C. 1978, 388 A.2d 466).

Subchapter II.—Attachment and Garnishment After Judgment in Aid of Execution

§ 16-543. Revival of judgment unnecessary.

NOTES TO DECISIONS

Purpose of writ of attachment is to secure the debt or anticipated debt. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Writ ordering child support payments is not a "writ of execution," governed by §§ 15-302 and 15-305, but a writ of attachment, governed by this section. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Each periodic payment for child support becomes a separate money judgment as of the date of its accrual to

which this section applies. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

Life of each child support judgment is the 12-year period specified in § 15-101, irrespective of whether the judgments are or are not recorded. *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

§ 16-546. Attachments of credits.

NOTES TO DECISIONS

Certain contingent contract rights not subject to garnishment. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

Nor are debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon

acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

§ 16-556. Judgment against garnishee.

NOTES TO DECISIONS

Certain contingent contract rights not subject to garnishment. — Contract rights which are to become due only upon the passage of time or upon the happening of a condition are not subject to garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

Nor are debts of uncertain amounts. — If the amount of a debt sought to be garnished becomes fixed only upon

acceptance of performance satisfactory to the obligee or upon the exercise of judgment, discretion or opinion as distinguished from mere calculation or computation, then the amount of the debt is not sufficiently certain to permit garnishment. *Shpritz v. District of Columbia* (D.C. 1978, 393 A.2d 68).

Subchapter III. — Attachment and Garnishment of Wages, Etc.

§ 16-575. Judgment against employer-garnishee for failure to pay percentages.

NOTES TO DECISIONS

Cited in *Landahl, Brown & Weed, Assocs. v. Houston* (D.C. 1979, 404 A.2d 934).

CHAPTER 7.—CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT

§ 16-704. Bail; collateral security.

NOTES TO DECISIONS

Alternatives for release must promptly be made available. — Unless the alternatives of release on citation, bond or forfeitable collateral are available promptly to

arrestees detained for processing, they are detained in violation of their Fourth Amendment rights. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

§ 16-705. Jury trial; trial by court.

NOTES TO DECISIONS

No right to jury trial. — There is no entitlement to trial by jury under chapter 7B of title 32 of the D.C. Code as the maximum penalty prescribed is a fine of not more than \$300.00 or imprisonment for not more than 90 days, or both. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

Effective waiver of right to jury trial. — An effective waiver of the Sixth Amendment right to trial by jury must include an oral inquiry of the defendant himself in open court, his reply indicating that he understands the nature of his right and that he chooses to waive it and a written waiver signed by the defendant. *Hawkins v. United States* (D.C. 1978, 385 A.2d 744).

Waiver ineffective. — A written waiver signed by the defendant coupled with an oral waiver by defense counsel is not a sufficient waiver of the Sixth Amendment right to jury trial. *Hawkins v. United States* (D.C. 1978, 385 A.2d 744).

When oral inquiry required for waiver. — Oral inquiry of the defendant to ascertain whether he knowingly and voluntarily waives his Sixth Amendment right to trial by jury is mandated in all cases, particularly where the trial court is faced with questions of competence and mental responsibility. *Hawkins v. United States* (D.C. 1978, 385 A.2d 744).

§ 16-710. Suspension of imposition or execution of sentence.

NOTES TO DECISIONS

Construction of section. — The words of this section should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

"For such time" phrase in the first sentence modifies the length of time of the suspension and not the length of the time in jail to be suspended. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Intent of Congress was to allow the courts to suspend the whole sentence, thus granting probation which takes effect immediately. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Judicial authority for Superior Court. — This section, not the Federal Probation Act, is the source of authority allowing the suspending of sentences and the granting of probation by the Superior Court. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Judgment of trial court. — The decision to suspend the sentence of one convicted of a crime and to substitute

probation for that sentence is committed by statute to the sound judgment of the trial court. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Commencement of sentence. — The ordinary sense and meaning of this section is that the commencement of service of sentence may be held in abeyance. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Imposition of sentence must precede grant of probation. — This section permits the trial court to grant probation only after it has imposed a sentence and suspended its execution. *Schwasta v. United States* (D.C. 1978, 392 A.2d 1071).

This section contains no reference to suspending a part of the sentence. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Split sentence defined. — A split sentence is a sentence on one count which imposes a term of incarceration, suspends only part of it, and places the defendant on probation following his release from

incarceration in lieu of the suspended balance of the prison term. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Split sentences unauthorized. — A judge of the Superior Court has no authority to impose a split sentence. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Split sentences on a one count case are not authorized under this section. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Psychiatric examination as condition of probation. — Given the broad discretion concerning imposition of

probation conferred upon the sentencing court and the contents of the presentence report in the case, it was not unlawful for the trial court to require the defendant to submit to a psychiatric examination as a condition of probation. *Moore v. United States* (D.C. 1978, 387 A.2d 714).

Cited in *Clemons v. United States* (D.C. 1979, 400 A.2d 1048).

CHAPTER 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

§ 16-902. Residence requirements.

NOTES TO DECISIONS

Cited in *Moore v. Moore* (D.C. 1979, 398 A.2d 32).

§ 16-904. Grounds for divorce, legal separation and annulment.

NOTES TO DECISIONS

Maturation of grounds. — A divorce may be granted for grounds created by this section maturing both before

and after the section's effective date. *Moore v. Moore* (D.C. 1979, 398 A.2d 32).

§ 16-908. Relationship not dependent on marriage.

NOTES TO DECISIONS

Cited in *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

§ 16-910. Dissolution of property rights; jurisdiction of court.

NOTES TO DECISIONS

Legislative intent. — In enacting this section, the legislature sought to facilitate the authority of Superior Court judges to reach equitable results in divorce property dispositions without requiring the Court to search for strict legal or equitable ownership interests in the nontitled spouse. *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

In codifying the trial court's power to distribute all property acquired during a marriage under this section, the legislature did expressly exempt from such distribution property acquired otherwise. *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

Import of section as a whole is that the court properly should focus on the circumstances under which a property was originally brought into a marriage. *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

Trial court's discretion under this section is broad. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

And unaffected by subsection (b). — The court's broad discretion in allocating property is unaffected by subsection (b) of this section. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Consideration of enumerated factors. — The legislature has merely enumerated in this section several

nonexclusive factors that the trial court is to consider in the exercise of its discretion. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Totality of circumstances. — The court's decision as to whether property is the sole and separate property of one spouse is to be based upon an assessment of the totality of the circumstances. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Amount contributed by each party. — Under this section the trial court is obliged to consider the amount each party contributed toward the property, but that element alone is not controlling. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Transformation of "marital property". — If the property initially was acquired as "marital property" during the course of the marriage, it will remain so for the purposes of this section. *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

"Marital property" cannot be transformed into "sole and separate property acquired during the marriage by gift . . ." for the purposes of assignment under subsection (a) of this section by a subsequent action of a spouse such as the purported gift of sole ownership from one spouse to the other. *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

Requirement for exemption from distribution. — A threshold requirement that must be satisfied in order for property to be exempt under this section from distribution is that it be “the sole and separate property” of one spouse. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144); *Hemily v. Hemily* (D.C. 1979, 403 A.2d 1139).

There is no room under subsection (a) of this section for apportioning property or tracing funds; that role is reserved specifically for subsection (b) of this section. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Creation of tenancy by entirety as conditional gift subject to divestiture. — In the District of Columbia the creation of a tenancy by the entirety in property acquired through the sole contribution of one spouse is a gift conditioned upon fulfillment of the marital vows and continuance of the married state, so that desertion by a spouse and subsequent divorce upon those grounds may result in a divestiture of the conditional gift in favor of the innocent spouse purchaser. *Williams v. Williams* (D.C. 1978, 390 A.2d 4).

Joint property falls within subsection (b). — If and when the property is put in joint names, for whatever

reason, then it is no longer exempted under subsection (a) of this section, but rather falls within subsection (b) of this section, under which the trial court is to determine how the property is to be distributed. *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144).

Award of joint estate to husband within judge's discretion. — Where neither husband nor wife had made a significant financial contribution to purchase or improve their house and property and only the husband was obligated to repay the loans which had made possible the purchase and improvements, the mere listing of the parties as joint tenants was not dispositive on the issue of legal entitlement following a divorce, and it was within the trial judge's discretion to award the home entirely to the husband. *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795).

District of Columbia court applied law of another jurisdiction rather than this section where the only relationship of the District to a claim regarding the ownership of property outside the District was that the District provided a forum with jurisdiction over the defendant. *Williams v. Williams* (D.C. 1978, 390 A.2d 4).

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children.

NOTES TO DECISIONS

Court in child custody case acts as parens patriae. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Child's best interest sole criterion in parent's custody dispute. — In a dispute between the biological parents over custody, the sole consideration is the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377) (overruling any prior inconsistent decisions).

The best interest of the child is the standard to be applied in custody disputes between the natural father and mother of an illegitimate child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Court to decide custody without applying presumptions. — In a dispute between a natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child's best interest solely by reference to the facts of the particular case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377) (overruling any prior inconsistent decisions).

The trial court erred in relying on the proposition that a fit mother can never be deprived of custody and in explicitly refusing to reach the issue of the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Custody factors properly evaluated. — Neither the court's oral ruling nor its written findings of fact and conclusions of law indicated that it had improperly accorded presumptive significance to the factors of motherhood and physical possession of a child in determining the question of future custody. *Moore v. Moore* (D.C. 1978, 391 A.2d 762). But see *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943); *Turpin v. Turpin* (D.C. 1979, 403 A.2d 1144); *Wolf v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 397 A.2d 936).

§ 16-913. Alimony when divorce is granted.

NOTES TO DECISIONS

Desertion not absolute bar to alimony. — Desertion, while a bar to separate maintenance, is not an absolute bar to alimony. *Kessler v. Kessler* (D.C. 1979, 397 A.2d 932).

But it is a factor which must be considered in the judgment of what would be a just and proper

determination of whether to award alimony and if so, the amount thereof. *Kessler v. Kessler* (D.C. 1979, 397 A.2d 932).

§ 16-914. Retention of jurisdiction as to alimony and custody of children.

NOTES TO DECISIONS

Court in child custody case acts as parens patriae. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Child's best interest sole criterion in parents' custody dispute. — In a dispute between the biological parents

over custody, the sole consideration is the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377) (overruling any prior inconsistent decisions).

The best interest of the child is the standard to be applied in custody disputes between the natural father and mother of an illegitimate child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Court to decide custody without applying presumption. — In a dispute between a natural mother and father over custody of their child, the trial court shall decide the delicate question of what is the child's best interests solely by reference to the facts of the particular case and without resort to the crutch of a presumption in favor of either party. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377) (overruling any prior inconsistent decisions).

The trial court erred in relying on the proposition that a fit mother can never be deprived of custody and in explicitly refusing to reach the issue of the best interest of the child. *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

Custody factors properly evaluated. — Neither the court's oral ruling nor its written findings of fact and conclusions of law indicated that it had improperly accorded presumptive significance to the factors of motherhood and physical possession of a child in determining the question of future custody. *Moore v. Moore* (D.C. 1978, 391 A.2d 762). But see *Bazemore v. Davis* (D.C. 1978, 394 A.2d 1377).

§ 16-915. Change of name on divorce.

NOTES TO DECISIONS

Purpose and effect of section. — This section recognizes the common-law right of a married woman to change her name back to her maiden or previously used name and provides a mechanism by which the woman may exercise her right at the time of divorce and record the name change without filing a separate action under § 16-2501 et seq. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

Trial court without discretion. — This section does not leave the decision of whether the divorce decree should authorize restoration of a prior name to the discretion of the trial court. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

Cited in *Brown v. Brown* (D.C. 1978, 382 A.2d 1038).

§ 16-916. Maintenance of spouse and minor children; maintenance of former spouse; maintenance of minor children; enforcement.

NOTES TO DECISIONS

Father's duty to support his needy children is commensurate with his ability to do so. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

Child support order may not be used to penalize errant father through the imposition of harsh financial terms. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

Modification of original support order unjustified. — Where the trial court did not find a change in either the

needs of the children or the ability of the parents to provide for those needs which would justify an increase in the father's obligation of support, modification of the court's original order was not justified. *Wright v. Wright* (D.C. 1978, 386 A.2d 1191).

CHAPTER 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

Subchapter I.—Ejectment

§ 16-1101. Parties defendant; joint tenants and tenants in common.

NOTES TO DECISIONS

Cited in *Martin v. Carter* (D.C. 1979, 400 A.2d 326); *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

§ 16-1109. Recovery of mesne profits and damages; separate count.

NOTES TO DECISIONS

Cited in *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

§ 16-1111. Separate action for rent or damages.

NOTES TO DECISIONS

Jurisdiction to try possession despite pending suit for accounting. — There was no merit to a claim that the Landlord and Tenant Division was without jurisdiction to issue an order for possession because a claim for accounting was still pending in the Civil Division, where

the only issue before the Landlord and Tenant Division was possession, no accounting was requested and a claim for a money judgment was waived. *Watwood v. Yambrusic* (D.C. 1978, 389 A.2d 1362).

§ 16-1124. Ejectment for non-payment of rent; time limitation on relief from judgment; set-off; dismissal upon payment.

NOTES TO DECISIONS

Landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of a tenant's right not

to have his possession interfered with except by lawful process gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).

CHAPTER 13.—EMINENT DOMAIN

Subchapter II.—Real Property for District of Columbia

§ 16-1316. Time for surrender of possession under declaration of taking; adjustment of charges.

NOTES TO DECISIONS

Government priority over proceeds. — Where private and public claims compete for the proceeds from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

Confiscating agency subrogated to government's priority. — Redevelopment Land Agency, having satisfied

a demolition assessment against land acquired by it, was subrogated to the government's general priority as to condemnation proceeds and thus had priority over private mortgagee for sum required to reimburse the RLA for paying both the assessment and the interest which had accrued thereon. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

CHAPTER 15.—FORCIBLE ENTRY AND DETAINER

§ 16-1501. Definition; summons.

NOTES TO DECISIONS

Landlord's common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, and violation of a tenant's right not to have his possession interfered with except by lawful process gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781), overruling *Snitman v.*

Goodman (D.C. 1955, 118 A.2d 394).

Court declined to shield mortgagor holding over after foreclosure from an action under the forcible entry and detainer statute. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

Cited in *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

CHAPTER 19.—HABEAS CORPUS

§ 16-1901. Petition; issuance of writ.

NOTES TO DECISIONS

Physician acting under magistrate's order was federal officer. — Physician acting pursuant to a U.S. magistrate's order under § 21-902 served as a federal officer within the meaning of subsection (b). *Bension v. Meredith* (1978, 455 F. Supp. 662).

Writ subject to jurisdictional limitations. — The writ authorized by this section has traditionally been subject to jurisdictional limitations. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

This section pertains only to the "Great Writ" of habeas corpus ad subjiciendum (inquiry into the cause of restraint) and not to writs procedural in nature and used for purposes other than to test the legality of confinement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And does not authorize writs of habeas corpus ad prosequendum. — The authority to issue writs of habeas corpus ad prosequendum, which bring a person who is confined for some other offense before the issuing court for trial, cannot be read into the language of this section without severe strain. *United States v. Cogdell* (1978, 585 F.2d 1130, 190 U.S. App. D.C. 185).

Which are issued under the All Writs Act. — Since Congress, in reforming the District of Columbia court system, could not have intended to remove the local courts' power to issue writs of habeas corpus ad prosequendum, that authority still exists under the All Writs Act (28 U.S.C. § 1652). *United States v. Cogdell* (1978, 585 F.2d 1130, 190 U.S. App. D.C. 185).

Transfer of inmates to nonpunishment mental health unit not solely within purview of habeas corpus. — Transfer of inmates to a nonpunishment mental health unit of the District of Columbia correctional system does not come solely within the purview of habeas corpus although habeas corpus may afford alternative relief for inmates challenging that condition of their confinement; accordingly, the exhaustion of remedies in Superior Court is not a prerequisite to federal relief in this transfer situation. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. D.C. 258).

CHAPTER 23.—FAMILY DIVISION PROCEEDINGS

Subchapter III. — Proceedings Regarding the
Termination of Parental Rights of
Certain Neglected Children

Sec.

16-2359. Adjudicatory hearing.

16-2361. Effect of termination decree.

*Subchapter I.—Proceedings Regarding Delinquency, Neglect, or Need of
Supervision*

§ 16-2301. Definitions.

NOTES TO DECISIONS

Purpose of this section is to avoid treatment of juveniles as adult criminal defendants to the extent practicable. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

Noncriminal treatment preferred. — It is implicit in the statutory scheme governing juvenile proceedings that noncriminal treatment is to be the rule, and adult treatment the exception. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

Subdivision (3) (A) effects transfer to Criminal Division. — Subdivision (3) (A), by deeming an individual not to be a "child" when certain serious offenses are charged, in effect decrees by operation of law a "transfer"

of that individual to the Criminal Division within the meaning of § 16-2307 (h), with the resulting termination of Family Division jurisdiction (subject to restoration as prescribed) over any subsequent delinquent act for which there is a criminal statute equally applicable to adults. *In re C.S.* (D.C. 1977, 384 A.2d 407).

Cited in *North v. District of Columbia Bd. of Educ.* (1979, 471 F. Supp. 136); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *In re H.M.* (D.C. 1978, 386 A.2d 707); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2302. Transfer of criminal matters to Family Division.**NOTES TO DECISIONS**

Right to juvenile disposition lost if not achieved before jeopardy attaches. — Because of the language of subsection (b), a defendant's asserted right to disposition in juvenile proceedings is forever lost if not resolved in his favor before jeopardy has attached. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

Decision for adult trial is final order immediately appealable. — A determination that a defendant be tried

as an adult is a final order and immediately appealable. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

Transfer to Family Division does not preclude retransfer. — Transfer of a case to the Family Division under subsection (a) does not preclude retransfer of a defendant's case for criminal prosecution under the provisions of § 16-2307. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2305. Petition; contents; amendment.**NOTES TO DECISIONS**

Offense charged in petition. — In order for a delinquency finding to stand, it must be based on an offense charged in the petition or, as in an adult criminal proceeding, on a crime which is a lesser-included offense

of the one charged. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 16-2307. Transfer for criminal prosecution.**NOTES TO DECISIONS**

Section 16-2301 (3) (A) effects transfer under this section. — Section 16-2301 (3) (A), by deeming an individual not to be a "child" when certain serious offenses are charged, in effect decrees by operation of law a "transfer" of that individual to the Criminal Division within the meaning of subsection (h) of this section, with the resulting termination of Family Division jurisdiction (subject to restoration as prescribed) over any subsequent delinquent act for which there is a criminal statute equally

applicable to adults. *In re C.S.* (D.C. 1977, 384 A.2d 407).

Transfer under § 16-2302 (a) does not preclude retransfer under this section. — Transfer of a case to the Family Division under § 16-2302 (a) does not preclude retransfer of a defendant's case for criminal prosecution under the provisions of this section. *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2310. Criteria for detaining children.**NOTES TO DECISIONS**

Cited in *In re C.S.* (D.C. 1977, 384 A.2d 407).

§ 16-2312. Detention or shelter care hearing; intermediate disposition.**NOTES TO DECISIONS**

Cited in *In re B.P.* (D.C. 1979, 397 A.2d 974); *In re C.S.* (D.C. 1977, 384 A.2d 407).

§ 16-2315. Physical and mental examinations.**NOTES TO DECISIONS**

Constitutionality of section. — The demands of the due process and equal protection clauses are fully satisfied by proceedings, pursuant to this section, which are fundamentally fair. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

Juvenile factfinding hearing does not result in a determination of criminal responsibility. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

And precluding a juvenile from raising an insanity defense at a factfinding hearing denies him no right that is otherwise accorded an adult. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

This section bars an insanity defense in juvenile delinquency proceedings. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

Treatment equivalent to insanity defense. — This section provides a special treatment for the mentally ill

juvenile offender equivalent to the insanity defense. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

Child's mental health considered. — The Family Division must consider, at the dispositional hearing, the mental health of the child at the time of the offense, as well as at the time of such hearing. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

§ 16-2317. Hearings, findings; dismissal.

NOTES TO DECISIONS

Determination of care and treatment. — This section requires that if the Family Division finds that the child was mentally ill at the time of the offense, but at the time of disposition was fully restored to mental health, the Division

would then be required to determine whether, in view of all the facts and circumstances, the child is or is not in need of care and treatment. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

§ 16-2319. Predisposition study and report.

NOTES TO DECISIONS

Consideration of report required. — Because of the specific requirement in this section that the Family Division order a predisposition report containing specific

information, the Division is required to consider the results of the report and failure to do so would constitute an abuse of discretion. *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.

NOTES TO DECISIONS

Cited in *In re C.W.M.* (D.C. 1979, 407 A.2d 617); *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2321. Disposition of mentally ill or substantially retarded child.

NOTES TO DECISIONS

Cited in *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

§ 16-2322. Limitation of time on dispositional orders.

NOTES TO DECISIONS

Section applies to orders concerning termination of parental visitation rights. — Nothing in §§ 16-2351 — 16-2365 modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the time limitations in this section, because enactment of the procedure in §§ 16-2351 — 16-2365 for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order

permanent termination of fewer than all parental rights, such as the right to visitation. *In re H.M.* (D.C. 1978, 386 A.2d 707).

And to orders ancillary to temporary custody awards under subsections (a) (2) or (c). — Any order ancillary to an award of temporary custody under subsection (a) (2) or (c), such as an order limiting a parent's visitation rights, is subject to the same time limitations found in those subsections. *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2323. Review of dispositional orders.

NOTES TO DECISIONS

Cited in *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2327. Probation revocation; disposition.

NOTES TO DECISIONS

Conformance of juvenile detention procedures required. — This section requires that the procedures for detaining a juvenile pending a hearing on probation revocation conform, as nearly as is appropriate, with procedures established for detaining juveniles in other circumstances. *In re B.P.* (D.C. 1979, 397 A.2d 974).

Corporation Counsel's authority not restricted. — This section places no restrictions on the Corporation

Counsel's authority to file delinquency or probation revocation petitions. *In re B.P.* (D.C. 1979, 397 A.2d 974).

Cited in *In re C.S.* (D.C. 1977, 384 A.2d 407); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 16-2335. Sealing of records.

NOTES TO DECISIONS

Cited in *John Doe v. Webster* (1979, 606 F.2d 1226, U.S. App. D.C.).

Subchapter II.—Parentage Proceedings

§ 16-2342. Time of bringing complaint.

NOTES TO DECISIONS

This section imposes jurisdictional time limitations. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Section is not applicable to proceedings to establish right to visitation, in which parentage must be proved solely in order to allow a proper consideration of the request for visitation rights. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon establishment of parentage by sufficient proof, is distinct from the right to visitation. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

Subchapter III.—Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children

§ 16-2351. Purpose of the subchapter; construction of provisions.

NOTES TO DECISIONS

Time limitations of § 16-2322 apply to orders terminating visitation rights. — Nothing in this subchapter modifies the prior law that in child neglect proceedings dispositional orders concerning termination of parental visitation rights, as such, are subject to the time limitations in § 16-2322, because enactment of the

procedure in this subchapter for permanently terminating all parental rights in order to facilitate adoption does not imply authority of the court to order permanent termination of fewer than all parental rights, such as the right to visitation. *In re H.M.* (D.C. 1978, 386 A.2d 707).

§ 16-2359. Adjudicatory hearing.

* * * * *

(e) Notwithstanding the provisions of D.C. Code, sections 14-306 and 14-307, neither the husband/wife privilege nor the physician/client or mental health professional/client privilege shall be a ground for excluding evidence in any proceeding brought under this subchapter. (As amended Mar. 3, 1979, D.C. Law 2-136, § 805(d), 25 DCR 5055.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-136, amended section by substituting “the physician/client or mental health professional/client privilege” for “the physician/patient privilege” in subsection (e).

Legislative History of Law 2-136. See note to § 6-1611.

§ 16-2361. Effect of termination decree.

* * * * *

(b) When an order terminating the parent and child relationship has been issued, the parent whose right has been terminated shall not thereafter be entitled to notice of proceedings for the adoption of the child by another nor shall such parent have any right to object to the adoption or other wise to participate in the proceedings. (Added Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341.)

Compiler’s note. Subsection (b) of this section is set out in this Supplement to correct an error as it appears in Supplement V.

CHAPTER 25.—CHANGE OF NAME

§ 16-2501. Application; persons who may file.

NOTES TO DECISIONS

Separate action not required where change of name on divorce. — Section 16-915 recognizes the common-law right of a married woman to change her name back to her maiden or previously used name and provides a mechanism

by which the woman may exercise her right at the time of divorce and record the name change without filing a separate action under this chapter. *Brown v. Brown* (D.C. 1977, 384 A.2d 632).

CHAPTER 27.—NEGLIGENCE CAUSING DEATH

§ 16-2701. Liability; damages; prior recovery as precluding action.

NOTES TO DECISIONS

Negligent conduct resulting in death gives rise to two independent rights of action, one under the Wrongful Death Act (§ 16-2701 et seq.) and one under the Survival Act (§ 12-101 et seq.), upon each of which damages may be sought. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Purpose of wrongful death action. — This action is designed to provide a remedy whereby close relatives of a deceased, who might naturally have expected maintenance or assistance from the deceased had he lived, may recover compensation from the wrongdoer commensurate with their pecuniary loss. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Judgment under Virginia law estopped claim under District law. — Having obtained a favorable Virginia judgment premised on the applicability of the Virginia wrongful death law, a plaintiff was estopped from subsequently claiming that District law rather than Virginia law governed the rights and liabilities of the parties. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Interest analysis approach to choice of law questions. — The District of Columbia has increasingly applied an “interest analysis” approach to choice of law questions in tort cases in general and wrongful death cases in particular. *Semler v. Psychiatric Inst. of Wash., D.C., Inc.* (1978, 575 F.2d 922, 188 U.S. App. D.C. 41).

Cited in *In re Air Crash Disaster Near Saigon* (1979, 476 F. Supp. 521); *Quin v. George Washington Univ.* (D.C. 1979, 407 A.2d 580); *Rieser v. District of Columbia* (1978, 580 F.2d 647, 188 U.S. App. D.C. 384); *Hughes v. Pender* (D.C. 1978, 391 A.2d 259).

§ 16-2702. Party plaintiff; statute of limitations.

NOTES TO DECISIONS

Cited in *Chandler v. District of Columbia* (D.C. 1979, 404 A.2d 964).

§ 16-2703. Distribution of damages.

NOTES TO DECISIONS

Cited in *Chandler v. District of Columbia* (D.C. 1979, 404 A.2d 964).

CHAPTER 29.—PARTITION AND ASSIGNMENT OF DOWER

Subchapter I.—Partition Generally

§ 16-2901. Parties; accounting by tenant in common.

NOTES TO DECISIONS

Tenant in common is entitled to seek partition of real property as a matter of right. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Quasi in rem proceeding. — An action for partition is a proceeding which is quasi in rem. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Notice is core question. — The core question in a partition suit is not whether the court has acquired

personal jurisdiction over the defendant (which it does not need) but rather whether the defendant has been given sufficient notice, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to object. *Hinton v. Hinton* (D.C. 1978, 395 A.2d 7).

Cited in *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795).

CHAPTER 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

§ 16-3301. Complaint; allegations; parties; service; decree.

NOTES TO DECISIONS

Cited in *Sullivan v. Malarkey* (D.C. 1978, 392 A.2d 1057).

TITLE 16.—APPENDIX

§ 3. Proceedings to compel or stay arbitration.

NOTES TO DECISIONS

Strong legal presumption favors arbitrability of labor disputes. *Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co.* (1977, 442 F. Supp. 1060).

TITLE 17.—REVIEW

| Chap. | Sec. |
|--|--------|
| 3. District of Columbia Court of Appeals | 17-301 |

CHAPTER 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

§ 17-301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.

NOTES TO DECISIONS

Cited in *Gamble v. Smith* (D.C. 1978, 386 A.2d 692).

§ 17-305. Scope of review.

NOTES TO DECISIONS

Setting aside findings of fact. — The Court of Appeals may not set aside a trial court's findings of fact unless it appears they are plainly wrong or without evidence to support them. *Bell v. District of Columbia Dep't of Cors.* (D.C. 1979, 403 A.2d 330).

Court of Appeals cannot disturb trial court findings supported by the evidence. — *Cunningham v. United States* (D.C. 1978, 391 A.2d 1360).

Factual findings cannot be based on speculation. — In nonjury trial, the court's factual findings of negligence were overturned pursuant to this section because they were based on an "assumption" and findings by the trier of fact on vital points in a case cannot be left thus to mere conjecture or speculation. *Edison v. Scott* (D.C. 1978, 388 A.2d 1239).

To make an independent determination of when an arrest occurred, the Court of Appeals will give deference to the trial court's findings of fact as to the circumstances surrounding the defendant's encounter with the police. *Giles v. United States* (D.C. 1979, 400 A.2d 1051).

New trial based upon prosecutorial misconduct. — An appellant is entitled to a new trial based upon prosecutorial misconduct only if, after balancing the gravity of the prosecutorial misconduct against the weight of the evidence against appellant, the appellate court is unable to say that the conduct did not substantially sway the judgment of the jury. *Sellers v. United States* (D.C. 1979, 401 A.2d 974).

Laches. — Whether the facts, taken together, are sufficient to sustain the defense of laches is a question of

law which the appellate court will review without need for deference to the trial court's judgment. *American Univ. Park Citizens Ass'n v. Burka* (D.C. 1979, 400 A.2d 737).

Evidence sufficient. — *Sundown, Inc. v. Canal Square Assoc's* (D.C. 1978, 390 A.2d 421); *Shelton v. United States* (D.C. 1978, 388 A.2d 859).

Trial court findings overturned as plainly wrong. — *In re J.G.J.* (D.C. 1978, 388 A.2d 472).

Cited in *Timus v. United States* (D.C. 1979, 406 A.2d 1269); *McShain, Inc. v. L'Enfant Plaza Properties, Inc.* (D.C. 1979, 402 A.2d 1222); *Reid v. United States* (D.C. 1979, 402 A.2d 835); *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293); *Lewis v. United States* (D.C. 1979, 399 A.2d 559); *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84); *In re Y.G.* (D.C. 1979, 399 A.2d 65); *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968); *Brock v. Mutual Reports, Inc.* (D.C. 1979, 397 A.2d 149); *In re W.B.W.* (D.C. 1979, 397 A.2d 143); *Bussey v. United States* (D.C. 1978, 395 A.2d 11); *Rose v. Silver* (D.C. 1978, 394 A.2d 1368); *Little v. United States* (D.C. 1978, 393 A.2d 94); *In re Douglas* (D.C. 1978, 390 A.2d 1); *Benvenuto v. Benvenuto* (D.C. 1978, 389 A.2d 795); *Metts v. United States* (D.C. 1978, 388 A.2d 47); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Edwards v. Woods* (D.C. 1978, 385 A.2d 780); *United States v. Covington* (D.C. 1978, 385 A.2d 164); *Smith v. Rogers Mem. Hosp.* (D.C. 1978, 382 A.2d 1025); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

Part III

Decedents' Estates and Fiduciary Relations

- TITLE 19. DESCENT AND DISTRIBUTION.
TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.
TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 19.—DESCENT AND DISTRIBUTION

| Chap. | Sec. |
|--|--------|
| 1. Rights of Surviving Spouse and Children | 19-101 |
| 3. Intestates' Estates | 19-301 |

CHAPTER 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

§ 19-103. Forfeiture of dower by desertion and adultery.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

CHAPTER 3.—INTESTATES' ESTATES

Sec.
19-316. Share of illegitimate children; their heirs; mother; father.

§ 19-316. Share of illegitimate children; their heirs; mother; father.

Illegitimate children and the heirs of illegitimate children are capable of taking real and personal estate by inheritance from their mother or from their father if parenthood has been established, or from each other, or from heirs of each other, as the case may be, in like manner as if born in lawful wedlock, and the mother and such father, and their respective heirs, are capable of inheriting from such children. (Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Oct. 1, 1976, D.C. Law 1-87, § 22 (a), (c), 23 DCR 2544; June 13, 1978, D.C. Law 2-78, § 2, 24 DCR 9282.)

Effect of Amendment.
1978 — Act June 13, 1978, D.C. Law 2-78, amended section by striking “by judicial process or pursuant to sec. 19-318”, by striking “issue” and inserting in lieu thereof “heirs” and by striking “descendants” and inserting in lieu thereof “heirs”.
Legislative History of Law 2-78. Law 2-78 was introduced in Council and assigned Bill No. 2-232, which was referred to the Committee on the Judiciary. The Bill

was adopted on first and second readings on February 21, 1978 and March 7, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-172 and transmitted to both Houses of Congress for its review.
Short title. The first section of the act of June 13, 1978, D.C. Law 2-78, provided: “That this act may be cited as the ‘Paternity Procedures Clarifying Amendment Act of 1978.’ ”

§ 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

| Chap. | Sec. |
|---|---------|
| 3. Executors and Administrators | 20-301 |
| 15. Suits | 20-1501 |

CHAPTER 3.—EXECUTORS AND ADMINISTRATORS

Subchapter III.—Miscellaneous Provisions Relating to Executors and Administrators

§ 20-351. Competency to serve as executor or administrator; determination.

NOTES TO DECISIONS

Cited in *John Doe v. Webster* (1979, 606 F.2d 1226, U.S. App. D.C.).

CHAPTER 15.—SUITS

| Sec. |
|---|
| 20-1501. Suits by and against executors and administrators. |

§ 20-1501. Suits by and against executors and administrators.

Executors and administrators may commence and prosecute any civil action which the testator or intestate might have commenced and prosecuted, and may be sued in any civil action which might have been maintained against the deceased. (Sept. 14, 1965, 79 Stat. 725, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; Aug. 2, 1978, D.C. Law 2-95, § 3, 25 DCR 1270.)

Effect of Amendment.
1978 — Act Aug. 2, 1978, D.C. Law 2-95, amended section by deleting the designation “(a)” at the beginning of the first sentence and by deleting all of subsection (b).

Legislative History of Law 2-95. See note to § 12-101.

Effective date. Section 4 of Act Aug. 2, 1978, D.C. Law 2-95, 25 DCR 1270, provided that the 1978 amendment of

this section shall only apply with respect to all actions, proceedings and matters commenced in any administrative or judicial forum on or after the effective date of D.C. Law 2-95.

§ 20-1505. Suits by foreign executors and administrators.

NOTES TO DECISIONS

Cited in *Quin v. George Washington Univ.* (D.C. 1979, 407 A.2d 580).

TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

| Chap. | Sec. |
|--|---------|
| 5. Hospitalization of the Mentally Ill | 21-501 |
| 9. Mentally Ill Persons Found in Certain Federal Reservations | 21-901 |
| 11. Commitment and Maintenance of Substantially Retarded Persons | 21-1101 |
| 15. Conservators | 21-1501 |

CHAPTER 5.—HOSPITALIZATION OF THE MENTALLY ILL
Subchapter I.—Definitions; Commission on Mental Health

§ 21-501. Definitions.

NOTES TO DECISIONS

Purpose of chapter. — This chapter had as one of its central purposes the goal of assuring that patients hospitalized under it would not automatically be deprived of their basic constitutional rights. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Hospital superintendent could not appeal order releasing person. — A hospital superintendent could not appeal a trial court’s order releasing one whom he had sought unsuccessfully to have judicially hospitalized under this chapter because the superintendent was not an

“aggrieved party” within the meaning of § 11-721 (b) and because any right of appeal granted to him would be contrary to the design and intent of this chapter, which emphasizes promptness of determination and the immediate release of persons determined to be either not mentally ill or not dangerously mentally ill. *In re Lomax* (D.C. 1978, 386 A.2d 1185).

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662); *Jones v. United States* (D.C. 1978, 396 A.2d 183); *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries.

NOTES TO DECISIONS

Legislative intent. — By retaining the definitional language “physician of the person in question” in the face of suggestions that less restrictive language be substituted in subsection (c), Congress appears to have intended to identify a physician who would be empowered to initiate the emergency hospitalization procedure by his relationship with the person in question and not merely by his identification as a member of the profession. *Williams v. Meredith* (D.C. 1979, 407 A.2d 569).

Particular relationship by physician required. — This section includes physicians without regard to whether they

are publicly or privately employed, but it requires of them a particular relationship with the individual as a precondition to acting. *Williams v. Meredith* (D.C. 1979, 407 A.2d 569).

Commission members excluded. — “Physician of the person in question” does not include physician-members of the Commission who participated in recommending that the person in question be hospitalized. *Williams v. Meredith* (D.C. 1979, 407 A.2d 569).

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

Subchapter II.—Voluntary and Nonprotesting Hospitalization

§ 21-511. Voluntary hospitalization.

NOTES TO DECISIONS

Public hospitals in the District must accept voluntary patients for treatment. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Exemption from section. — Section 21-587 was intended as an exemption for Veterans’ Administration

and military facilities from the broad requirement of this section, not as an affirmative requirement that other public hospitals transfer eligible patients to them. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Subchapter III.—Emergency Hospitalization

§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.

Section referred to in section. 6-1624.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-522. Examination and admission to hospital; notice.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569); *In re Boyd* (D.C. 1979, 403 A.2d 744); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569); *Bension v. Meredith* (1978, 455 F. Supp. 662); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-524. Determination and order of court.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569); *Bension v. Meredith* (1978, 455 F. Supp. 662); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-525. Hearing by court.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-526. Extension of maximum periods of time.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569).

§ 21-527. Examination and release of person; notice.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569).

§ 21-528. Detention of person pending judicial proceedings.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569);
In re Lomax (D.C. 1978, 386 A.2d 1185).

Subchapter IV.—Hospitalization Under Court Order

§ 21-541. Petition to Commission; copy to person affected.

Section referred to in section. 6-1629.

NOTES TO DECISIONS

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. *In re Kossow* (D.C. 1978, 393 A.2d 97).

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569);
In re Boyd (D.C. 1979, 403 A.2d 744); *Bension v. Meredith*
(1978, 455 F. Supp. 662); *Jones v. United States* (D.C. 1978,
396 A.2d 183); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569);
In re Kossow (D.C. 1978, 393 A.2d 97); *In re Lomax* (D.C.
1978, 386 A.2d 1185).

§ 21-543. Representation by counsel; compensation; recess.

NOTES TO DECISIONS

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial.

NOTES TO DECISIONS

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569);
In re Kossow (D.C. 1978, 393 A.2d 97); *In re Lomax* (D.C.
1978, 386 A.2d 1185).

§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors.**NOTES TO DECISIONS**

Government bears burden at commitment hearings of proving mental illness and likelihood of injury beyond a reasonable doubt. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

The government is required under this section to prove beyond a reasonable doubt that the target of normal civil commitment proceedings is mentally ill and likely to be dangerous if left at liberty. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Right to jury decision. — Under this section a prospective civil committee has the right to have a jury decide whether his condition meets the requirements for civil commitment. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Application of section to defendants committed upon insanity verdict. — Defendant lawfully committed upon finding of not guilty by reason of insanity was not constitutionally entitled to release or civil commitment proceedings under this section upon expiration of the

maximum period for which he could have been imprisoned, since the length of a hypothetical prison term has no relationship to the rehabilitative goal and safety concerns of hospital confinement. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Nonparticipation of prosecuting authority does not prevent commitment. — There is no statutory or constitutional command forbidding civil commitment of an individual in a judicial proceeding litigated by a private petitioner when the prosecuting authority has elected not to participate. *In re Kossow* (D.C. 1978, 393 A.2d 97).

Civil commitment to Saint Elizabeths under this section demonstrates only that a committee is mentally ill and likely to injure herself or others; it does not, at the same time, mean that the committee is legally incompetent. *In re Boyd* (D.C. 1979, 403 A.2d 744).

Cited in *Williams v. Meredith* (D.C. 1979, 407 A.2d 569); *In re Lomax* (D.C. 1978, 386 A.2d 1185).

§ 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court.**NOTES TO DECISIONS**

Cited in *Jones v. United States* (D.C. 1978, 396 A.2d 183).

§ 21-548. Periodic examinations by hospital authorities; release.**NOTES TO DECISIONS**

Application of section to defendants committed upon insanity verdict. — As a matter of constitutional equal protection, acquittees committed under § 24-301 are

entitled to periodic review similar to that afforded to civilly committed persons under this section. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

*Subchapter V.—Right to Communication; Exercise of Other Rights***§ 21-562. Medical and psychiatric care and treatment; records.**

Section referred to in section. 6-1620.

NOTES TO DECISIONS

Cited in *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

§ 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964.**NOTES TO DECISIONS**

Hospital's only duty to protect the incompetent person is that its chief of service must notify the patient, his attorney, legal guardian, certain relatives, the Superior

Court of the District of Columbia, the Commission on Mental Health, and the Mayor of the District of Columbia if he is of the opinion that the patient is unable to exercise

any of his rights. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Adjudication of incompetency required. — A hospital is prevented by this section from treating its patients as wards prior to an adjudication of incompetency. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Separate competency hearing required. — This section requires that competency be determined in a separate hearing from one ordering commitment to a mental hospital. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Cited in *In re Boyd* (D.C. 1979, 403 A.2d 744).

Subchapter VI.—Miscellaneous Provisions

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement.

Section referred to in section. 6-1623.

NOTES TO DECISIONS

Cited in *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

§ 21-587. Veterans' Administration and military hospital facilities.

NOTES TO DECISIONS

Intent of section. — This section was intended as an exemption for Veterans' Administration and military facilities from the broad requirement of § 21-511, not as an affirmative requirement that other public hospitals transfer eligible patients to them. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

No affirmative duty to transfer patient. — This section does not place an affirmative duty on a hospital to transfer a patient eligible for treatment at a Veterans' Administration hospital facility to that facility. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

§ 21-588. Forms.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

CHAPTER 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

§ 21-901. Definition.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-902. Commitments by special commissioners of certain district courts.

NOTES TO DECISIONS

This is an interim detention statute of which treatment is obviously not an aim. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Detainee must be mentally ill and likely to injure himself or others. — In order to preserve the constitutionality of the Federal Reservation Act (§§ 21-901—21-909), this section must be construed to require a magistrate authorizing commitment to find probable cause to believe not only that the detainee is mentally ill within the meaning of the Act but also that he is likely to injure himself or others if not detained. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Exhaustion doctrine inapplicable to suit challenging statute. — This federal reservation statute, although appearing in the District of Columbia Code, lacks any other attribute of a state statute within the meaning of the

exhaustion doctrine, so that there was no reason for the federal district court to defer to the local judiciary in an action challenging the constitutionality of proceedings under the statute. *Bension v. Meredith* (1978, 455 F. Supp. 662).

Release of detainee did not moot case challenging constitutionality of commitment where collateral legal

consequences might have resulted from his detention and the issue was capable of repetition, yet evading review on account of the short commitment period. *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.

NOTES TO DECISIONS

Cited in *Bension v. Meredith* (1978, 455 F. Supp. 662).

§ 21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

NOTES TO DECISIONS

Meaning of “adjudication”. — The term “adjudication” in subsection (b) refers to a judicial order for indefinite commitment. *Bension v. Meredith* (1978, 455 F. Supp. 662).

CHAPTER 11.—COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS

| | |
|--|---|
| Sec. | Sec. |
| 21-1101. Forest Haven defined. | 21-1115. Inquiry under this chapter if person convicted of offense. |
| 21-1102 to 21-1108A. [Repealed.] | 21-1116 to 21-1118. [Repealed.] |
| 21-1113. [Repealed.] | 21-1120 to 21-1123. [Repealed.] |
| 21-1114. Proceeding when child brought before Family Division appears at least moderately mentally retarded. | |

§ 21-1101. Forest Haven defined.

For purposes of this chapter —

“Forest Haven” means the institution established pursuant to section 32-601, and designated “Forest Haven” by section 32-602, or any successor to that institution. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150 (g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2 (a) (4), 84 Stat. 1088; Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (5), 25 DCR 5094.)

| | |
|---|---|
| Effect of Amendment. | Legislative History of Law 2-137. See note to § 6-1651. |
| 1979 — Act Mar. 3, 1979, D.C. Law 2-137, amended section by deleting the definition of a “substantially retarded person” which formerly appeared at the end of the section. | |

§§ 21-1102 to 21-1108A. Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (1), 25 DCR 5094.

Legislative History of Law 2-137. See note to § 6-1651.

§ 21-1113. Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (1), 25 DCR 5094.

Legislative History of Law 2-137. See note to § 6-1651.

§ 21-1114. Proceeding when child brought before Family Division appears at least moderately mentally retarded.

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other evidence, that the child is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.), the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16-2307, and direct the child’s parent or a guardian appointed by the court to file a petition under that act. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150 (g) (7), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91-490, § 2 (a) (1) (12), 84 Stat. 1087; Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (2), 25 DCR 5094.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-137, amended section by substituting “at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.)” for “substantially retarded within the meaning of this chapter” and “the child’s parent or a

guardian appointed by the court to file a petition under that act” for “a suitable officer of the court or other suitable reputable person to file a petition under this chapter” in the first sentence.

Legislative History of Law 2-137. See note to § 6-1651.

§ 21-1115. Inquiry under this chapter if person convicted of offense.

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other evidence that the person is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.), may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a parent or guardian appointed by the court file a petition under that act.

* * * * *

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to be at least moderately mentally retarded, the court shall impose sentence.
(As amended Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (3), (4), 25 DCR 5094.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-137, amended section by substituting “at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Code, sec. 6-1651 et seq.)” for “substantially retarded within the meaning of this chapter” and “parent or guardian

appointed by the court file a petition under that act” for “petition be filed pursuant to this chapter” in subsection (a) and “at least moderately mentally retarded” for “substantially retarded” in subsection (c).

Legislative History of Law 2-137. See note to § 6-1651.

§§ 21-1116 to 21-1118. Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (1), 25 DCR 5094.

Legislative History of Law 2-137. See note to § 6-1651.

§§ 21-1120 to 21-1123. Repealed. Mar. 3, 1979, D.C. Law 2-137, § 604 (a) (1), 25 DCR 5094.

Legislative History of Law 2-137. See note to § 6-1651.

CHAPTER 15.—CONSERVATORS

§ 21-1501. Appointment of conservators.

NOTES TO DECISIONS

Cited in *District of Columbia v. Moxley* (1979, 471 F. Supp. 777); *In re Boyd* (D.C. 1979, 403 A.2d 744); *In re Coffey* (D.C. 1978, 390 A.2d 446).

§ 21-1503. Bond; powers and duties.

NOTES TO DECISIONS

Cited in *In re Coffey* (D.C. 1978, 390 A.2d 446).

§ 21-1506. Personal welfare of person under conservatorship.

NOTES TO DECISIONS

Cited in *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

§ 21-1507. Lis pendens.

NOTES TO DECISIONS

Cited in *In re Boyd* (D.C. 1979, 403 A.2d 744).

Part IV

Criminal Law and Procedure

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- TITLE 23. CRIMINAL PROCEDURE.
- TITLE 24. PRISONERS AND THEIR TREATMENT.

TITLE 22.—CRIMINAL OFFENSES

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CHAPTER 1.—GENERAL PROVISIONS

§ 22-103. Attempts to commit crime.

NOTES TO DECISIONS

Cited in *Johnson v. United States* (D.C. 1979, 404 A.2d 162); *Lewis v. United States* (D.C. 1978, 389 A.2d 306); *Wynn v. United States* (D.C. 1978, 386 A.2d 695); *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

§ 22-104. Second conviction.

NOTES TO DECISIONS

Petit larceny does not become an indictable offense despite the fact that repeated convictions of that offense exposed the accused to a maximum three-year sentence

under this section. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

§ 22-104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions — Definitions — Effect of convictions pardoned on the ground of innocence.

NOTES TO DECISIONS

Habitual criminals. — This section provides enhanced punishment for habitual criminals. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Discretion of sentencing judge. — This section permits the sentencing judge to increase sentence to what he deems necessary. *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

Limited applicability of felony definition. — Application of the felony definition contained in this section is specifically limited to use under this section. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Conviction for carrying concealed weapons. — In the same proceeding, a single prior felony conviction may not be used to convert a conviction under § 22-3204 into a felony offense and to serve as one of the two prior felony convictions for enhanced sentencing under this section. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Cited in *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Harvey v. United States* (D.C. 1978, 395 A.2d 92).

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Elements of the offense of aiding and abetting are (1) guilty knowledge on the part of the accused, (2) that an offense was committed by someone and (3) that the defendant assisted or participated in the commission of the offense. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

This section requires proof that the offense charged was committed by someone other than the person charged with aiding and abetting, that the accused assisted or participated in the commission and that he did so with guilty knowledge. *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

One who knowingly participates in the commission of a criminal act by assisting the principal is equally liable. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Identity of principal not essential. — There must be a guilty principal before there can be an aider and abettor, but it is not essential that the principal in an operation be identified so long as someone has that status. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Significance of presence at scene of crime. — Presence at the scene of a crime, even when coupled with knowledge that a crime is being committed, is generally not enough to constitute aiding and abetting, but an act of relatively slight moment, when coupled with knowledge, may warrant a finding of participation in the crime. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Presence at scene of crime, while insufficient alone, will constitute aiding and abetting if it designedly encourages

the perpetrator, facilitates the unlawful deed or stimulates others to render assistance. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Evidence of defendant's proximity to shoplifter at the time the goods were placed in the bag and the manner in which he was continuously looking around, suggesting that he was serving as lookout, was sufficient to support conviction for aiding and abetting. *Montgomery v. United States* (D.C. 1978, 384 A.2d 655).

Aider and abettor liable for acts in furtherance of common purpose. — An accomplice who aids and abets the commission of a felony is legally responsible as a principal for all acts of another person which are in furtherance of the common purpose, if the act done either is within the scope of that purpose or is the natural or probable consequence of the act intended. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Whether or not he intended result accomplished. — An accessory is liable for any criminal act which was the natural and probable consequence of the initial encounter whether he did or did not intend the result accomplished. *Johnson v. United States* (D.C. 1978, 386 A.2d 710).

Aider and abettor need not have had identical intent of principal at the same time and place. *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Felony murder liability of accomplice derives from this section. — Section 22-2401 by its terms imposes felony murder liability solely on the person who does the killing, so that other participants in the felony are exposed to first-degree murder liability only by virtue of this section. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And arises out of common-law vicarious liability. — The felony murder liability of an accomplice must be determined in accordance with common-law concepts of vicarious liability. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Instructions on liability as principal and accomplice proper. — In a trial for first-degree murder, even though the evidence tended to prove that the defendant was the actual killer it was not inconsistent or misleading for the trial court to instruct on the theory that he was an aider and abettor as well as the actual killer, because the greater participation in the offense includes the lesser, and the

legal effect is the same. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Evidence sufficient. — *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Johnson v. United States* (D.C. 1978, 386 A.2d 710); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *In re R.A.B.* (D.C. 1979, 399 A.2d 81); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Waller v. United States* (D.C. 1978, 389 A.2d 801); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

§ 22-105a. Punishment of persons convicted of conspiracies to commit crimes — Proof — Conspiracies to commit crimes within or outside of the District.

NOTES TO DECISIONS

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263); *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

§ 22-106. Accessories after the fact.

NOTES TO DECISIONS

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner's consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder

while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252.)

Cited in *McBride v. United States* (D.C. 1978, 393 A.2d 123).

CHAPTER 4.—ARSON

§ 22-401. Definition and penalty.

NOTES TO DECISIONS

There is no value requirement for arson. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Malicious burning not lesser-included offense. — Although malicious burning is a related offense, it is not a lesser-included offense of arson, and a petition charging

one with arson gives no notice that he may face a charge of malicious burning. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Cited in *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

Malicious burning not lesser-included offense. — Malicious burning of movable property is not a lesser-included offense of arson. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Although malicious burning is a related offense, it is not a lesser-included offense of arson. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Proper notice of offense. — The only way an individual is on proper notice of facing the offense of malicious

burning is to be charged with it, and a petition charging one with arson gives no notice that he may face a charge of malicious burning. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Element of value is a hallmark of malicious burning. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

This section contains a value element. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Minimum value must be established. — In order to be found in violation of this section, some evidence of a minimum value must be established by the government. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Evidence of minimum value may be inferred from evidence that the property destroyed had a useful,

functional purpose. *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

Cited in *Gaetano v. United States* (D.C. 1979, 406 A.2d 1291); *Ingram v. United States* (D.C. 1978, 392 A.2d 505); *Farrell v. United States* (D.C. 1978, 391 A.2d 755); *Wynn v. United States* (D.C. 1978, 386 A.2d 695).

CHAPTER 5.—ASSAULT — MAYHEM — THREAT OF BODILY HARM

§ 22-501. Assault with intent to kill, rob, rape, or poison.

NOTES TO DECISIONS

Not necessary to prove aider and abettor had intent to kill. — Given the provisions of § 22-105 requiring aiders and abettors to be charged as principals, it was not necessary to prove that a defendant had intent to kill in order to convict him under this section so long as the evidence showed that he was one of three men who had held guns on the victim, who was shot by one of the three. *Allen v. United States* (D.C. 1978, 383 A.2d 363).

Failure to give corroboration instruction harmless error. — Where the circumstances provided adequate independent evidence that accusations of sodomy and assault with intent to commit rape were not a fabrication, the court's failure to give the required corroboration instruction was harmless error. *Williams v. United States* (D.C. 1978, 385 A.2d 760).

Defendant had no legitimate claim to defense of self-defense in a prosecution under this section since he had voluntarily placed himself in a position which he could reasonably expect would result in violence. *Nowlin v. United States* (D.C. 1978, 382 A.2d 9).

Joinder of charges did not prejudice defendant. — Joinder of charges of rape and assault with intent to rape did not prejudice the defendant where because of unusual factual similarities between the two offenses charged evidence of each crime would have been admissible in a separate trial of the other to show identity and motive and, in the case of the charge of assault with intent to rape, to show intent. *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Failure to instruct on assault as lesser-included offense not error. — Where there was insufficient

evidence on the issue of lack of intent to justify giving an instruction on assault as a lesser-included offense of assault with intent to rape, the failure to so instruct was not error. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Merger of assault counts. — Conviction of assault with a dangerous weapon was vacated by the trial judge as having merged with a count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Cited in *Sampson v. United States* (D.C. 1979, 406 A.2d 574); *Sellers v. United States* (D.C. 1979, 401 A.2d 974); *Jones v. United States* (D.C. 1979, 401 A.2d 473); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Oesby v. United States* (D.C. 1979, 398 A.2d 1); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Cureton v. United States* (D.C. 1978, 386 A.2d 278); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Reed v. United States* (D.C. 1978, 383 A.2d 316); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

Assault contemplated by this section is common-law assault. *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

Proof required. — For the government to prove assault with a dangerous weapon, it must prove not only the three elements of assault but also that the defendant committed an assault with a dangerous weapon. *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

Standard of proof. — To sustain a conviction for assault the government must prove each and every element beyond a reasonable doubt. *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

Assault is a general intent crime. *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

And intent must be proven beyond a reasonable doubt. *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

Best evidence of weapon's dangerous character and of what it was capable of doing was the injury actually

inflicted by it. *Freeman v. United States* (D.C. 1978, 391 A.2d 239).

Outweighed prejudicial effect. — Probative value of testimony that a complainant had suffered a miscarriage as a result of the assault, as evidence of the dangerous character of the weapon used in the assault (a board), outweighed the testimony's probable prejudicial effect, and it therefore was properly admitted. *Freeman v. United States* (D.C. 1978, 391 A.2d 239).

Defendant had no legitimate claim to defense of self-defense in a prosecution under this section since he had voluntarily placed himself in a position which he could reasonably expect would result in violence. *Nowlin v. United States* (D.C. 1978, 382 A.2d 9).

Assault with dangerous weapon lesser included offense of armed robbery. — Robbery and assault with a dangerous weapon are lesser included offenses of armed

robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Merger of assault counts. — Conviction of assault with a dangerous weapon was vacated by the trial judge as having merged with a count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Instruction on lesser included offenses not necessary. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Impact of conviction on civil assault action. — His conviction for assault with a dangerous weapon having been affirmed on appeal, the defendant could not relitigate the issue of liability for the assault when sued in a civil action for damages resulting from that assault. *Ross v. Lawson* (D.C. 1978, 395 A.2d 54).

Evidence sufficient. — *Johnson v. United States* (D.C. 1978, 386 A.2d 710).

Cited in *Sullivan v. United States* (D.C. 1979, 404 A.2d 153); *Rease v. United States* (D.C. 1979, 403 A.2d 322); *Rouse v. United States* (D.C. 1979, 402 A.2d 1218); *Morgan v. United States* (D.C. 1979, 402 A.2d 598); *Roberts v. United States* (D.C. 1979, 402 A.2d 441); *Letsinger v.*

United States (D.C. 1979, 402 A.2d 411); *Jones v. United States* (D.C. 1979, 401 A.2d 473); *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *Mitchell v. United States* (D.C. 1979, 399 A.2d 866); *Vance v. United States* (D.C. 1979, 399 A.2d 52); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Oesby v. United States* (D.C. 1979, 398 A.2d 1); *In re W.B.W.* (D.C. 1979, 397 A.2d 143); *Fields v. United States* (D.C. 1979, 396 A.2d 990); *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Lewis v. United States* (D.C. 1978, 393 A.2d 109); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Webb v. United States* (D.C. 1978, 388 A.2d 857); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Brown v. United States* (D.C. 1978, 383 A.2d 1082); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Chambers v. United States* (D.C. 1978, 383 A.2d 343); *Harling v. United States* (D.C. 1978, 382 A.2d 845).

§ 22-503. Assault with intent to commit any other offense.

NOTES TO DECISIONS

Cited in *Morgan v. United States* (D.C. 1979, 402 A.2d 598).

§ 22-504. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

Assault and possession of a prohibited weapon are separate and distinct offenses. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Nonviolent action involving sexual misconduct may constitute an assault because the sexual nature of the conduct supplies the missing element of violence or threat of violence. *In re L.A.G.* (D.C. 1979, 407 A.2d 688).

Commission of indecent act. — No one could commit an indecent act without also committing an assault. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Proof required. — To support a conviction for assault, the government must prove an attempt or effort with force or violence to inflict bodily harm with apparent present ability to carry out the attempt or effort. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Showing of violence is not necessary to convict under this section; any attempt to do any bodily injury, however small, will suffice. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Corroborative evidence required. — Where the sole underlying basis of a nonviolent assault is its character as a sexual crime, and the complainant is a child, legal precedent in this jurisdiction requires corroborative evidence. *In re L.A.G.* (D.C. 1979, 407 A.2d 688).

Evidence to show self-defense inadmissible absent connection between threats and victim. — Where defendant testified that he had acted in self-defense and

that his actions were reasonable based upon threats on his life, a tape recording of one such threat and the testimony of witnesses corroborating the existence of such threats were properly excluded since in the absence of any allegation that the threats had been made by the victim the evidence was on a collateral issue which might have confused the jury. *Moore v. United States* (D.C. 1978, 387 A.2d 714).

Assault not committed in defense of property. — Where defendant asserted a "defense of property" defense to a charge of assaulting a gas company collector who had attempted to remove his gas meter for failure to pay bill, the trial judge properly instructed the jury that as long as the victim's entry was nonforcible there was no trespass and that as long as he did not depart from the legitimate purpose of his entry, the defendant was not justified in ejecting him. *Jackson v. United States* (D.C. 1978, 385 A.2d 786).

Instruction on lesser included offenses not necessary. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Cited in *Duddles v. United States* (D.C. 1979, 399 A.2d 59); *Washington v. United States* (D.C. 1979, 397 A.2d 946);

United States v. Dixon (1978, 446 F. Supp. 58); *Lucas v. United States* (1977, 443 F. Supp. 539).

§ 22-505. Assault on member of police force or fire department.

NOTES TO DECISIONS

Section reaches attacks on juvenile personnel occurring outside District. — The language of subsection (a) “whether such institution or facility is located within the District of Columbia or elsewhere” reaches attacks on personnel of juvenile facilities taking place outside, as well as inside, the District. *In re A.S.W.* (D.C. 1978, 391 A.2d 1385).

Defendant could be convicted under this section even though co-conspirator had fired at pursuing police officers, on any of four theories: (1) that the assault was the natural and probable consequence of the attempted robbery in which the defendant participated, (2) that the assault took place during the defendant’s escape from an

assault on another officer in which the defendant did actively participate, (3) that the defendant actively aided and abetted the co-conspirator in that escape and was thus equally responsible under § 22-105 for the attendant assault on the second police officer or (4) that the escape attempt was an inherent element of the crime intended. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Evidence sufficient. — *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *Oesby v. United States* (D.C. 1979, 398 A.2d 1); *Scott v. United States* (D.C. 1978, 392 A.2d 4).

§ 22-506. Mayhem or maliciously disfiguring.

NOTES TO DECISIONS

Relationship between mayhem and murder statutes. — The statutory provisions dealing with murder and those dealing with mayhem are intended to protect different societal interests: The mayhem statute seeks to protect the preservation of the human body in its normal functioning and the integrity of the person from permanent injury or disfigurement, whereas the felony murder statute purports to protect human life and permits the jury (when

death results) to infer the presence of malice from the fact that mayhem was committed. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Cited in *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Cohoon v. United States* (D.C. 1978, 387 A.2d 1098).

§ 22-507. Threats to do bodily harm.

NOTES TO DECISIONS

Cited in *Woodward v. District of Columbia* (D.C. 1978, 387 A.2d 726); *Jackson v. United States* (D.C. 1978, 385

A.2d 786); *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

CHAPTER 7.—BRIBERY — OBSTRUCTING JUSTICE

§ 22-703. Obstructing justice.

NOTES TO DECISIONS

It is not necessary to prove that witness was actually intimidated by threats but only that they had a reasonable tendency to intimidate. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Nor that obstructing statements or threats were directly addressed to intimidated witness. — This section does not require that obstructing statements be directly addressed to the allegedly intimidated witnesses or that threats of harm be directed toward such witnesses, and expressions of intent to kill certain witnesses made within earshot of other witnesses could tend to influence or intimidate those who heard the statements and thus

constitute obstruction within the meaning of this section. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Handwriting exemplars rendered with design to obstruct justice. — Conviction for obstruction of justice was proper where defendant’s identical twin brother was arrested for utilizing a stolen credit card and was ordered to give handwriting exemplars and the defendant rendered such exemplars with the design to prevent his brother from doing so. *Elliott v. United States* (D.C. 1978, 385 A.2d 183).

Evidence sufficient. — *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Cited in *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *In re C.S.* (D.C. 1977, 384 A.2d 407).

CHAPTER 9.—DOMESTIC RELATIONS

§ 22-901. Cruelty to children.

NOTES TO DECISIONS

Cited in *Cohoon v. United States* (D.C. 1978, 387 A.2d 1098).

CHAPTER 11.—DISORDERLY CONDUCT

§ 22-1107. Unlawful assembly — Profane and indecent language.

NOTES TO DECISIONS

Necessary to find whether words spoken in circumstances threatening breach of peace. — An adjudication of delinquency for violation of this section was reversed where the trial court had failed to make

findings on whether the words were spoken in circumstances that threatened a breach of the peace. *In re M.W.* (D.C. 1978, 383 A.2d 646).

§ 22-1121. Disorderly conduct — Generally.

NOTES TO DECISIONS

Legislative intent. — In promulgating this section, Congress had in mind the prevention of pickpocketing and similar crimes. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Intent required. — In disorderly conduct, there must be proof of an intent to breach the peace. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Relationship between pickpocketing and disorderly conduct. — There is an inherent relationship between the offenses of attempted robbery based on pickpocketing and disorderly conduct, as the “act” elements of both attempted robbery predicated on pickpocketing and disorderly conduct are identical. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Phrase “jostling against” in subdivision (4) has established objective meaning and contemplates a rough physical touching of one individual by another. *In re A.B.* (D.C. 1978, 395 A.2d 59).

“Handbag” language promotes legislative purpose. — Subdivision (4)’s prohibition against placing a hand in the proximity of a person’s pocketbook or handbag is conduct readily understood and comports with the apparent legislative intent to prevent pickpocketing by means of physically touching and then stealthily snatching a purse or pocketbook from the victim. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) provides notice to public and standards for officials. — The statutory language and history of subdivision (4) provide potential defendants with sufficient notice and police and courts with adequate standards concerning what conduct is proscribed, viz., touching a person with intent to take that person’s pocketbook or handbag and contents. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) describes the type of disorderly conduct it intends to punish in terms of three different acts which constitute the proscribed activity, and thus achieves the particularity and clarity of language required of criminal statutes. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Subdivision (4) describes the conduct it proscribes with words that have common meaning and thereby indicates with sufficient specificity the conduct it wishes to reach. *In re A.B.* (D.C. 1978, 395 A.2d 59).

A plain reading of the terms of subdivision (4) indicates that they do put a reasonable person on notice that certain specified behavior is deemed criminal. *In re A.B.* (D.C. 1978, 395 A.2d 59).

Cited in *District of Columbia v. Tschudin* (D.C. 1978, 390 A.2d 986).

CHAPTER 12.—EMBEZZLEMENT

§ 22-1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

NOTES TO DECISIONS

Cited in *Bethea v. United States* (D.C. 1978, 395 A.2d 787).

CHAPTER 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22-1301. False pretenses.

NOTES TO DECISIONS

Elements of false pretenses are false representation, knowledge of the falsity, specific intent to defraud, reliance by the victim, and the obtaining of valuable property. *Clemons v. United States* (D.C. 1979, 400 A.2d 1048).

Distinction between false pretenses and larceny. — Where defendants induced third parties to purchase goods for them with checks not covered by sufficient funds, they were properly convicted of false pretenses, but not of grand larceny because of the continued validity of the traditional distinction between false pretenses and larceny, i.e., that the victim of false pretenses intends for title to pass whereas the victim of larceny does not. *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Section 46-319 (a) on unemployment compensation fraud is identical with attempted false pretenses as

proscribed by this section and § 22-103. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

But not with false pretenses. — Since the elements of unemployment compensation fraud declared to be a misdemeanor under § 46-319 do not satisfy the requirements necessary to establish false pretenses under this section and since Congress did not intend that § 46-319 provide the exclusive criminal sanction for unemployment compensation fraud, defendant's conviction for false pretenses was proper. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

Presentation of a check is an implied representation of its validity. *Clemons v. United States* (D.C. 1979, 400 A.2d 1048).

§ 22-1304. Falsely impersonating public officer or minister.

NOTES TO DECISIONS

Cited in *Williams v. United States* (D.C. 1979, 404 A.2d 189).

§ 22-1306. False personation of police officer.

NOTES TO DECISIONS

Cited in *Williams v. United States* (D.C. 1979, 404 A.2d 189).

CHAPTER 14.—FORGERY—FRAUDS

§ 22-1401. Forgery.

NOTES TO DECISIONS

Need for instruction on lack of authority. — Whether lack of authority is considered a separate element of the offense of forgery or a part of the element of falsity, the jury must be advised that without proof of it the

prosecution may not succeed; but where the circumstantial evidence against a defendant was strong and the lack of authority was clear from the record, failure to specifically instruct the jury was only harmless error. *Hall v. United States* (D.C. 1978, 383 A.2d 1086).

Meaning of “signature” in forgery indictment. — Insertion of the name of a payee (even though fictitious) on the face of a check did not constitute a forgery of that payee’s “signature” as alleged in the indictment. *United States v. Peters* (1978, 587 F.2d 1267).

Cited in *Walker v. United States* (D.C. 1979, 402 A.2d 813).

§ 22-1410. Making, drawing, or uttering check, draft, or order with intent to defraud — Proof of intent — “Credit” defined.

NOTES TO DECISIONS

Cited in *Valentine v. United States* (D.C. 1978, 394 A.2d 1374); *Johnson v. United States* (D.C. 1978, 389 A.2d 1353); *Locks v. United States* (D.C. 1978, 388 A.2d 873).

CHAPTER 15.—GAMBLING

§ 22-1501. Lotteries — Promotion — Sale or possession of tickets.

NOTES TO DECISIONS

Allegation insufficient to establish denial of equal protection. — Defendant’s allegation that there were no prosecutions for possessing “legal” lottery tickets such as those sold by Maryland was insufficient to establish a denial of equal protection, which requires a difference in treatment based upon a constitutionally suspect standard. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

Section applied although offense occurred in federal building. — The fact that the offense occurred in a building owned by the United States did not deprive the Superior Court of jurisdiction. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

And despite mere existence of federal statute prohibiting lotteries there. — The mere existence of a federal statute prohibiting the operation of a lottery on the premises of the Veterans Administration Hospital did not prevent prosecution under this section for the same offense. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315).

§ 22-1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Section applied although offense occurred in federal building. — The fact that the offense occurred in a building owned by the United States did not deprive the Superior Court of jurisdiction. *Davis v. United States* (D.C. 1978, 385 A.2d 757).

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 22-1505. Gambling premises — Definition — Prohibition against maintaining — Forfeiture — Liens — Deposit of moneys in Treasury — Penalty — Subsequent offenses.

NOTES TO DECISIONS

Cited in *United States v. Williams* (1978, 580 F.2d 578, 188 U.S. App. D.C. 315); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 22-1508. Gambling pools and bookmaking — Athletic contest defined.

NOTES TO DECISIONS

Cited in *United States v. Gianaris* (1977, 454 F. Supp. 505); *Davis v. United States* (D.C. 1978, 390 A.2d 976).

CHAPTER 17.—HARBOR REGULATIONS

Sec.

22-1701. Harbor regulations — Authority vested in Council — Compliance with federal law

required — District and federal statutes and regulations supplemented.

§ 22-1701. Harbor regulations — Authority vested in Council — Compliance with federal law required — District and federal statutes and regulations supplemented.

The District of Columbia Council is hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as it may find necessary: Provided, that nothing in this section shall be construed or applied to require or excuse noncompliance with any provision of any federal law or regulation. This section shall not supersede but shall supplement all statutes and regulations of the District of Columbia and the United States in which similar conduct is prohibited or regulated. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat. 535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152, §§ 1, 2; June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1; June 15, 1934, 48 Stat. 963, ch. 536; Sept. 28, 1979, D.C. Law 3-25, § 4, 26 DCR 497.)

Effect of Amendment.

1979 — Act Sept. 28, 1979, D.C. Law 3-25, amended section by deleting the former first three paragraphs and by substituting the present proviso for the former two provisos in the remaining paragraph.

Emergency Act Amendment.

1979 — For temporary amendment of section, see sec. 4 of the Harbor and Boating Safety Emergency Act of 1979 (D.C. Act 3-69, July 12, 1979, 26 DCR 490).

Legislative History of Law 3-25. Law 3-25 was introduced in Council and assigned Bill No. 3-61. The Bill

was adopted on first and second readings on June 5, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-70 and transmitted to both Houses of Congress for its review.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the "Harbor and Boating Safety Act of 1979" (D.C. Law 3-25, Sept. 28, 1979, 26 DCR 497). These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

CHAPTER 18.—BURGLARY

§ 22-1801. Burglary — Penalties.

NOTES TO DECISIONS

First-degree burglary is lesser included offense of first-degree burglary while armed. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Procedure where one conviction out of several improper. — Where jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences, which might have been shorter had there not been the accompanying receiving convictions, the proper remedy was to vacate the convictions for receiving stolen goods and the sentences for burglary and larceny and remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Defect in indictment did not require reversal. — Indictment for second-degree burglary was not so defective as to require reversal of conviction where it fairly apprised the defendant of the charges against him and did not prejudice him in any way and where the variance between the indictment and the prosecution's evidence would not permit reprosecution and conviction if the present indictment were amended to allege the proper occupant of the burglarized apartment. *Ingram v. United States* (D.C. 1978, 392 A.2d 505).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *Gaetano v. United States* (D.C. 1979, 406 A.2d 1291); *Bates v. United States* (D.C. 1979, 403 A.2d 1159);

Bennett v. United States (D.C. 1979, 400 A.2d 322); *In re R.A.B.* (D.C. 1979, 399 A.2d 81); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Gilbert v. United States* (D.C. 1978, 395 A.2d 1); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *United States v. Harvey* (D.C. 1978, 392 A.2d 1049); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Johnson v. United*

States (D.C. 1978, 387 A.2d 1108); *Wynn v. United States* (D.C. 1978, 386 A.2d 695); *McDaniels v. United States* (D.C. 1978, 385 A.2d 180); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Crowder v. United States* (D.C. 1978, 383 A.2d 336); *Choco v. United States* (D.C. 1978, 383 A.2d 333); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Thomas v. United States* (D.C. 1978, 382 A.2d 24).

CHAPTER 21.—KIDNAPPING

§ 22-2101. Definition and penalty — Conspiracy.

NOTES TO DECISIONS

Section conforms with federal act (18 U.S.C. § 1201) defining kidnapping; consequently decisions of United States courts provide authoritative guidelines for interpretation of this section. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

Applicability of corroboration rule in kidnapping case. — Although corroboration is generally not required in kidnapping cases, the corroboration rule for sex offenses formerly followed in the District of Columbia federal courts would have applied in a federal court prosecution under this section for kidnapping for the purpose of rape. *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283).

Detention or confinement may merge with principal crime. — The detention or confinement of the victim in crimes such as rape, robbery and assault, if approximately coextensive in time and place with the crime itself, is an integral element of the crime, and like an attempt or a necessarily included lesser offense, it merges with the principal offense in contradistinction to constituting a separate crime. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

The detention, coercion, or confinement which is an integral part of every rape cannot support a separate conviction for kidnapping. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Or may constitute separate act of kidnapping. — Where pursuant to a crime such as rape, robbery or assault the victim is subjected to substantial acts of confinement or forcible transportation, the doctrine of merger cannot be used to treat such acts as mere incidents of the principal crime; rather the intent and text of this section require that such acts be treated as separate acts of kidnapping. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

The fact that there may have been a subsequent robbery and rape does not negate a kidnapping. *Beck v. United States* (D.C. 1979, 402 A.2d 418).

Depending upon facts of case. — Congress did not intend that every person who commits a rape be also charged and convicted of kidnapping, with its generally more severe penal consequences; rather the facts of each case must be examined to determine whether in fact two separate crimes were committed or whether they merged. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

In determining whether the separate crimes of rape and kidnapping should be merged, courts will inquire whether the asportation (or seizure) in a given case was of the type

incidental to every rape or whether the confinement and restraint were significant enough of themselves to warrant an independent prosecution for kidnapping. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Separate conviction for kidnapping can be sustained when the movement of the victim in the commission of another crime places the victim in greater danger or makes it more likely that the perpetrator will succeed in the underlying crime and will not be apprehended. *Beck v. United States* (D.C. 1979, 402 A.2d 418).

Prosecutions for both robbery and kidnapping. — The forcible detention and carrying away of a robbery victim which began before and continued after the victim was forced to yield his money and other valuables was not a detention approximately coextensive with or a necessary incident to the crime of robbery; hence conviction for the separate offense of kidnapping was within the intent as well as the text of this section. *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

And felony murder and kidnapping. — It was proper for the court to sentence defendant consecutively for kidnapping and felony murder, since his actions did not involve a single transaction resulting in two crimes but rather a series of interrelated acts resulting in two crimes which are defined by separate statutes that are not in pari materia, and since the transaction offended multiple societal interests and constituted separate offenses. *Pynes v. United States* (D.C. 1978, 385 A.2d 772).

Seizure and asportation merged with assault. — Where defendant without a weapon seized and dragged his victim approximately 63 paces over the course of a few moments before throwing her to the ground and attempting to rape her, that seizure and asportation was clearly incidental to the crime of assault with intent to rape and the likelihood of bodily harm was not substantially increased beyond that inherent in every assault with intent to rape; therefore the seizure and asportation did not constitute the separate crime of kidnapping but rather merged with the assault. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

Cited in *Sampson v. United States* (D.C. 1979, 406 A.2d 574); *Morgan v. United States* (D.C. 1979, 402 A.2d 598); *Coombs v. United States* (D.C. 1979, 399 A.2d 1313); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Smith v. United States* (D.C. 1978, 389 A.2d 1356).

CHAPTER 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201. Grand larceny.

NOTES TO DECISIONS

Larceny is a crime against possession, not immediate possession by a person. *Rease v. United States* (D.C. 1979, 403 A.2d 322).

Dead person can be a robbery victim at least where the taking and the death occur in close proximity. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Value of purloined property distinguishes grand from petit larceny. — An essential element of grand larceny, in fact the only distinction between the felony of grand larceny and the misdemeanor of petit larceny, is a market value for the purloined property of at least \$100. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Evidence of item's value at time of theft is essential unless evidence of the following three factors coincides to negate the possibility of jury speculation: (1) a very recent purchase of property for substantially more than \$100, (2) mint condition at the time of the theft and (3) property of a sort not subject to prompt depreciation or obsolescence. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Court would not judicially notice resistance of household appliances to rapid depreciation so that the government had to establish the value of a color television set at the time of theft. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Distinction between larceny and false pretenses. — Where defendants induced third parties to purchase goods for them with checks not covered by sufficient funds, they were properly convicted of false pretenses but not of

grand larceny because of the continued validity of the traditional distinction between those crimes, i.e., that the victim of false pretenses intends for title to pass whereas the victim of larceny does not. *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Appropriate disposition where evidence supported petit but not grand larceny is to reverse the grand larceny conviction and remand the case for entry of judgment of conviction for petit larceny, and for resentencing. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Where one of several convictions improper. — Where the jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences imposed, which might have been shorter had there not been the accompanying receiving convictions, the proper remedy was to vacate the convictions for receiving stolen goods and the sentences for burglary and larceny and to remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Cited in *In re R.A.B.* (D.C. 1979, 399 A.2d 81); *Johnson v. United States* (D.C. 1978, 387 A.2d 1108); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *Crowder v. United States* (D.C. 1978, 383 A.2d 336); *Thomas v. United States* (D.C. 1978, 382 A.2d 24).

§ 22-2202. Petit larceny — Order of restitution.

NOTES TO DECISIONS

Petit larceny is lesser included offense of robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Elements. — There is no suggestion of fraud or deceit as an element of the offense of petit larceny. *United States v. Fearwell* (1978, 595 F.2d 771, U.S. App. D.C.).

Petit larceny does not involve dishonesty or false statement. *United States v. Fearwell* (1978, 595 F.2d 771, U.S. App. D.C.).

Nature of crime. — Petit larceny does not become an indictable offense despite the fact that repeated convictions of that offense exposed the accused to a maximum three-year sentence under § 22-104 and is not a felony for purposes of determining the maximum sentences permitted under § 22-3204. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Appropriate disposition where evidence supported petit but not grand larceny is to reverse the grand larceny conviction and remand the case for entry of judgment of conviction for petit larceny, and for resentencing. *Moore v. United States* (D.C. 1978, 388 A.2d 889).

Cited in *Johnson v. United States* (D.C. 1979, 404 A.2d 162); *Nixon v. United States* (D.C. 1979, 402 A.2d 816); *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *Williams v. United States* (D.C. 1979, 400 A.2d 331); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *United States v. Harvey* (D.C. 1978, 392 A.2d 1049); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201); *Locks v. United States* (D.C. 1978, 388 A.2d 873); *Montgomery v. United States* (D.C. 1978, 384 A.2d 655); *In re D.L.J.* (D.C. 1978, 383 A.2d 1081).

§ 22-2203. Larceny after trust.

NOTES TO DECISIONS

Cited in *Hall v. United States* (D.C. 1978, 383 A.2d 1086).

§ 22-2204. Unauthorized use of vehicles.

NOTES TO DECISIONS

Cited in *Smother v. United States* (D.C. 1979, 403 A.2d 306); *Grant v. United States* (D.C. 1979, 402 A.2d 405);

United States v. Day (1978, 591 F.2d 861, 192 U.S. App. D.C. 252).

§ 22-2205. Receiving stolen goods.

NOTES TO DECISIONS

Proof of value. — Value, as an element of a felony charge of receiving stolen property, must be proved with precision. *Comber v. United States* (D.C. 1979, 398 A.2d 25).

Depreciated property. — Exception from the strict rule of proof of the value of stolen property as an element of this offense is unwarranted where the property is subject to prompt depreciation. *Comber v. United States* (D.C. 1979, 398 A.2d 25).

Procedure where one of several convictions improper. — Where the jury had been improperly permitted to return verdicts of guilty on counts of receiving stolen property when it had also returned verdicts of guilty on burglary and grand larceny counts, but the convictions for burglary and larceny were proper except for the sentences, which might have been shorter had there not been the

accompanying receiving convictions, the proper remedy was to vacate the convictions for receiving stolen goods and the sentences for burglary and larceny, and to remand for resentencing. *Franklin v. United States* (D.C. 1978, 392 A.2d 516).

Evidence sufficient. — *Brock v. United States* (D.C. 1979, 404 A.2d 955); *Johnson v. United States* (D.C. 1978, 387 A.2d 1108).

Evidence not sufficient. — *Bynum v. United States* (D.C. 1978, 386 A.2d 684).

Evidence sufficient to prove entrapment. — *United States v. Borum* (1978, 584 F.2d 424, 189 U.S. App. D.C. 266).

Cited in *In re M.L.H.* (D.C. 1979, 399 A.2d 556); *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

CHAPTER 23.—LIBEL—BLACKMAIL—EXTORTION

§ 22-2301. Libel.

NOTES TO DECISIONS

Elements of action for damages. — Complainant suing for damages for defamation of character based on an allegedly libelous television news broadcast had to show

that the broadcast was false, defamatory and published with some degree of fault. *Harrison v. Washington Post Co.* (D.C. 1978, 391 A.2d 781).

§ 22-2306. Intent to commit extortion by communication of illegal threats and demands — Penalty.

NOTES TO DECISIONS

Subdivision (2) encompasses threats to injure communicated directly to the intended victim. *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

§ 22-2307. Threatening to kidnap or injure a person or damage his property — Penalty.

NOTES TO DECISIONS

Admission of voice spectrographic identification, if error, was harmless in trial charging defendant with making threatening telephone calls where his motive and opportunity were shown by circumstantial evidence corroborating his admissions of the crime to a co-worker and the aural identification of his voice by two persons who

had had ample opportunity to hear the telephoned threats. *Brown v. United States* (D.C. 1978, 384 A.2d 647).

Cited in *Mariam v. United States* (D.C. 1978, 385 A.2d 776).

CHAPTER 24.—MURDER—MANSLAUGHTER

§ 22-2401. Murder in the first degree — Purposeful killing — Killing while perpetrating certain crimes.

NOTES TO DECISIONS

- I. General Consideration.
- II. Liability of Accomplices.

I. GENERAL CONSIDERATION.

Assertion that section is unconstitutionally vague was without merit since the defendant could not realistically claim to have been unaware that his conduct could result in conviction for first-degree murder. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

Common law codified. — This section merely codifies the common-law definition of first-degree murder rather than fashioning a new crime. *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

Purpose of felony murder statute is to protect human life. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Indictment and conviction for both felony murder and premeditated murder possible. — There is no legal obstacle to indicting and convicting a person of both felony murder and premeditated murder where those charges arise from a single homicide, because the offenses have different elements: Premeditated murder is a slaying done with "deliberate and premeditated malice," while felony murder occurs in the course of certain enumerated felonies. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

No legal obstacle prevents the prosecutor from indicting and the jury from convicting a defendant of both first-degree premeditated murder and felony murder under this section. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Even though sentences cannot be consecutive. — Fact that a defendant committing a single homicide cannot be given consecutive sentences for both first-degree murder and another crime of homicide does not mean that multiple convictions are impermissible. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Two elements requisite for conviction of felony murder are (1) the defendant or an accomplice must have inflicted injury on the decedent from which he died and (2) the injury must have been inflicted in perpetration of a specified felony. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

Underlying felony not lesser included offense of felony murder. — While the underlying felony is an element of felony murder, its principal function is as an intent-divining mechanism which permits the jury to infer the state of mind requisite for conviction of murder in the first degree, and as such it is not a lesser included offense of felony murder. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

The underlying felony does not "merge" into the murder. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

There can be no merger of armed robbery and felony murder because the societal interests which Congress sought to protect by enacting § 22-3201 (armed robbery) differ from the societal interests which were meant to be protected by the enactment of this section. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

There is nothing in either this section or the armed robbery statute to indicate that Congress intended to vitiate conviction for the underlying crime whenever death

resulted during its commission. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Court properly denied motion to sever count. — In a trial for murder in which the victim was stabbed with a knife, the trial court did not err in denying the defendant's motion to sever the third count of the indictment charging illegal possession of a sawed-off shotgun, since a reasonable mind could have concluded from the evidence that the defendant had had the shotgun in his possession when he assaulted the deceased and that he could have used either the gun or the knife in that assault. *Dockery v. United States* (D.C. 1978, 385 A.2d 767).

Transferred intent. — First-degree murder under this section can be proved on a theory of transferred intent. *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

When a defendant purposely attempts to kill one person but by mistake or accident kills another, the felonious intent of the defendant will be transferred from the intended victim to the actual, unintended victim. *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

Indictment sufficient though without allegation of specific intent to kill. — Although an indictment did not contain an allegation of specific intent to kill, its sufficiency was determined by practical rather than technical considerations, and the imperfection was not prejudicial. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Instruction on lesser included offenses not necessary. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Court properly sentenced defendant consecutively for kidnapping and felony murder since his actions did not involve a single transaction resulting in two crimes but rather a series of interrelated acts resulting in two crimes which are defined by separate statutes that are not in pari materia, and because the transaction offended multiple societal interests and constituted separate offenses. *Pynes v. United States* (D.C. 1978, 385 A.2d 772).

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner's consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252).

II. LIABILITY OF ACCOMPLICES.

Murder liability of felony participants arises under § 22-105. — This section by its terms imposes felony

murder liability solely on the person who does the killing, so that other participants in the felony are exposed to first-degree murder liability only by virtue of § 22-105. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And in accordance with common-law vicarious liability. — The felony murder liability of an accomplice must be determined in accordance with common-law concepts of vicarious liability. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Only intent to commit underlying felony need be proved. — No distinction is made between principals and aiders and abettors for purposes of felony murder liability, and only intent to commit the underlying felony need be proved. *Waller v. United States* (D.C. 1978, 389 A.2d 801).

But killing must be in furtherance of underlying felony. — Neither the purpose nor the effect of the 1940 amendment to this section (which added the provisions commencing “or without purpose so to do”) was to render an accomplice liable for a killing without regard to whether it was done in furtherance of the underlying felony. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Accomplice not liable if homicide fresh and independent product of killer’s mind. — There is no criminal responsibility on the part of an accomplice if a homicide is a fresh and independent product of the killer’s mind, outside of or foreign to the common design. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Failure to give standard jury instruction did not foreclose presenting defense. — Although the trial court in a felony murder case should have given the standard jury instruction that the felony murder liability of an accomplice requires that the killing occur in the course of

the felony and in furtherance of the common purpose to commit the felony, instead of instructing the jury that it could convict if it found that the killings occurred “in the course of the felony,” there was no reversible error because the instruction given did not prevent defense counsel from arguing to the jury that the killings were outside the scope of and foreign to the original plan or design. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Proper to instruct on both aider and abettor and actual killer theories. — Even though the evidence tended to prove that the defendant was the actual killer, it was not inconsistent or misleading for the trial court to instruct on the theory that he was an aider and abettor as well as the actual killer because the greater participation in the offense includes the lesser, and the legal effect is the same. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225).

Cited in *Parker v. United States* (D.C. 1979, 406 A.2d 1275); *Jackson v. United States* (D.C. 1979, 404 A.2d 911); *Hill v. United States* (D.C. 1979, 404 A.2d 525); *Smothers v. United States* (D.C. 1979, 403 A.2d 306); *Sousa v. United States* (D.C. 1979, 400 A.2d 1036); *Washington v. United States* (D.C. 1979, 397 A.2d 946); *In re W.B.W.* (D.C. 1979, 397 A.2d 143); *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Givens v. United States* (D.C. 1978, 385 A.2d 24); *Harling v. United States* (D.C. 1978, 382 A.2d 845).

§ 22-2403. Murder in second degree.

NOTES TO DECISIONS

State of mind is critical determination respecting existence of malice for second-degree murder. *Rink v. United States* (D.C. 1978, 388 A.2d 52), citing *Curry v. United States* (D.C. 1974, 322 A.2d 268).

Defendant’s expressions of hostility toward victim relevant to state of mind. — Testimony of witnesses concerning defendant’s threats and other expressions of hostility toward the victim on prior occasions were relevant to determine her state of mind and admissible for that purpose. *Rink v. United States* (D.C. 1978, 388 A.2d 52).

Defendant’s prior aggressive conduct towards deceased is relevant to self-defense claim because it is probative of (1) the existence of malice towards the deceased, (2) whether the defendant was likely to be the aggressor in the encounter at issue and (3) whether the defendant reasonably apprehended a danger of imminent serious bodily harm from the deceased; furthermore, evidence concerning prior instances of hostility, prior assaults and the like is particularly relevant in marital homicide cases. *Rink v. United States* (D.C. 1978, 388 A.2d 52).

Defendant not entitled to manslaughter instruction. — Defendant in second-degree murder prosecution was not entitled to a jury instruction on manslaughter as a lesser included offense where it was undisputed that the victim had been brutally beaten and thus the jury could not rationally infer the absence of malice, an element essential for murder but not present in manslaughter. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Entering manslaughter conviction on remand over defendant’s objection improper. — Where defendant was

convicted of second-degree murder and the trial court’s refusal to give manslaughter instruction was but one of several errors committed, the trial court on remand could not enter a conviction for manslaughter at the government’s request where the defendant objected and sought a new trial. *Pendergrast v. United States* (D.C. 1978, 385 A.2d 173). See also note from prior appeal of same case in 1978 Supp. under catchline “Conviction of lesser offense.”

Voluntary manslaughter is lesser included offense within second-degree murder. *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

Involuntary manslaughter is lesser included offense to murder. *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Reversal where admissible evidence did not overcome prejudice from hearsay statement. — Conviction was reversed where it could not be said with sufficient certainty that the admissible evidence was so overwhelming that the defendant was not unduly prejudiced by the introduction of a highly damaging hearsay statement as to his holding a gun to the decedent’s head. *Campbell v. United States* (D.C. 1978, 391 A.2d 283).

Government estopped from using evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner’s consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful

possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252).

Adoption of diminished capacity concepts province of legislature. — Scope and magnitude of concepts of diminished capacity or partial insanity are such that their adoption is solely within the province of the legislature and cannot be effected by expedient modification of the rules of evidence. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Evidence sufficient. — *Stewart v. United States* (D.C. 1978, 383 A.2d 330); *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

Cited in *Baylor v. United States* (D.C. 1979, 407 A.2d 664); *IBN-Tamas v. United States* (D.C. 1979, 407 A.2d 626); *Jackson v. United States* (D.C. 1979, 404 A.2d 911); *Letsinger v. United States* (D.C. 1979, 402 A.2d 411); *Sellars v. United States* (D.C. 1979, 401 A.2d 974); *Gillis v. United States* (D.C. 1979, 400 A.2d 311); *O'Connor v. United States* (D.C. 1979, 399 A.2d 21); *Jones v. United States* (D.C. 1979, 398 A.2d 11); *Braxton v. United States* (D.C. 1978, 395 A.2d 759); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Gaither v. United States* (D.C. 1978, 391 A.2d 1364); *Young v. United States* (D.C. 1978, 391 A.2d 248).

§ 22-2404. Punishment for murder in first and second degrees.

NOTES TO DECISIONS

Provision unconstitutional. — The Supreme Court's decision in *Furman v. Georgia* (1972, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed.2d 346) in effect rendered unconstitutional the provision of this section which permitted capital punishment for first-degree murder at the discretion of the jury. *Harling v. United States* (D.C. 1978, 387 A.2d 1101).

Bar to parole not superseded by federal law. — The general eligibility section (18 U.S.C. § 4205 (a)) of the

Federal Parole Act did not supersede the specific 20-year bar to parole contained in this section. *Frady v. United States Bureau of Prisons* (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118).

Cited in *United States v. Frady* (1979, 607 F.2d 383, U.S. App. D.C.).

§ 22-2405. Punishment for manslaughter.

NOTES TO DECISIONS

Voluntary manslaughter is lesser included offense within second-degree murder. *Branch v. United States* (D.C. 1978, 382 A.2d 1033).

But defendant not entitled to instruction where malice indisputably present. — Defendant in second-degree murder prosecution was not entitled to a jury instruction on manslaughter as a lesser included offense where it was undisputed that the victim had been brutally beaten and thus the jury could not rationally infer the absence of malice, an element essential for murder but not required for manslaughter. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Improper to enter conviction on remand over defendant's objection. — Where defendant was convicted of second-degree murder and the trial court's refusal to give manslaughter instruction was but one of several errors committed, the trial court on remand could not enter a conviction for manslaughter at the government's request where the defendant objected and sought a new trial. *Pendergrast v. United States* (D.C. 1978, 385 A.2d 173). See also note from prior appeal of same case in 1978 Supp. under catchline "Conviction of lesser offense."

Requisite intent for involuntary manslaughter is supplied by gross or criminal negligence, which is a lack

of awareness or failure to perceive the risk of injury from a course of conduct under circumstances in which the actor should have been aware of the risk. *Hawkins v. United States* (D.C. 1978, 395 A.2d 45).

Proximate cause is not an element of the offense of misdemeanor-manslaughter, any more than it is an element of felony-murder. *Walker v. United States* (D.C. 1979, 403 A.2d 1163).

Carrying pistol without license. — Involuntary manslaughter may occur as the result of the unlawful act of carrying a pistol without a license despite unforeseeability or unintentionality of death. *Walker v. United States* (D.C. 1979, 403 A.2d 1163).

Driving without license not evidence of gross or criminal negligence. — Fact that defendant was driving without a license did not constitute evidence that he was grossly or criminally negligent. *Hawkins v. United States* (D.C. 1978, 395 A.2d 45).

Cited in *Sellars v. United States* (D.C. 1979, 401 A.2d 974); *Jones v. United States* (D.C. 1979, 398 A.2d 11); *In re W.B.W.* (D.C. 1979, 397 A.2d 143).

CHAPTER 25.—PERJURY

§ 22-2501. Perjury — Subornation of perjury.

Section referred to in section. 6-1821.

NOTES TO DECISIONS

- I. General Consideration.
- II. Corroboration Requirement.

I. GENERAL CONSIDERATION.

Elements of perjury. — To be convicted of perjury under the District of Columbia Code, a defendant must have taken an oath to be truthful and violated that oath. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

In order to find a defendant guilty of perjury a jury must be convinced, beyond a reasonable doubt, that the accused testified falsely and that he did not, at the time, believe his testimony to be true. *Boney v. United States* (D.C. 1979, 396 A.2d 984).

Perjury indictment must allege falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Indictment alleged falsity with sufficient particularity. — Where, in addition to repeating the statutory language, the indictment referred to the defendant's oath before the judge and further specified the question and offending answer he allegedly gave, this sufficed to inform him of the alleged falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Simple allegation of materiality adequate. — A simple allegation in an indictment of the materiality of a falsehood did not render the indictment deficient for lack of specificity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Acknowledgment of contempt did not negate materiality of perjury. — Even if a defendant's acknowledgment at a hearing on an order to show cause, that he had learned about the temporary restraining order prior to the date set for the hearing, had constituted an admission of contempt for failure to comply with an order actually received, it would not necessarily negate the

materiality of his denial of service of the restraining order, which was material to his contumacy during the period between service of the order and his admitted receipt of notice. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Circumstantial evidence may be used as the sole evidence against a defendant in a perjury case. *Boney v. United States* (D.C. 1979, 396 A.2d 984).

II. CORROBORATION REQUIREMENT.

Uncorroborated oath of one witness is not enough to establish the falsity of testimony set forth in an indictment as perjury. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

But two witnesses or one plus independent corroborative evidence suffice. — While two witnesses will establish the falsity of an accused's testimony, one witness plus independent corroborative evidence will also suffice. *Boney v. United States* (D.C. 1979, 396 A.2d 984); *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Independent corroborative evidence need not be sufficient by itself to demonstrate perjury; rather it need only tend to establish an accused's guilt and be inconsistent with his innocence when joined with the testimony of one direct witness. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Circumstantial evidence can suffice to corroborate a witness's testimony as to perjury. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Jury determines trustworthiness of corroborative evidence, be it direct or circumstantial. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

CHAPTER 26.—PRISON BREACH—MISPRISONS

§ 22-2601. Prison breach.

NOTES TO DECISIONS

Cited in *United States v. Cogdell* (1978, 585 F.2d 1130, 190 U.S. App. D.C. 185); *United States v. Bailey* (1978, 585 F.2d 1087, 190 U.S. App. D.C. 142).

CHAPTER 27.—PROSTITUTION—PANDERING

§ 22-2701. Prostitution — Inviting for purposes of, prohibited.

NOTES TO DECISIONS

Corroboration requirement. — In prosecution for the solicitation of a covert police officer who stopped his car and was approached by the defendant, corroboration of the officer's testimony was required. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

Decision in *Arnold v. United States* (D.C. 1976, 358 A.2d 335), abrogating the rule that a rape victim's testimony

must be corroborated, did not overturn the need for corroboration in prosecution for solicitation for lewd and immoral purposes. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

CHAPTER 28.—RAPE

§ 22-2801. Definition and penalty.

NOTES TO DECISIONS

Elements of rape are sexual penetration of the victim and that that penetration was against her will. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Corroboration eliminated. — Both the need for corroboration evidence in rape offenses as to the sufficiency of evidence and a jury instruction that it must find corroboration have been eliminated where the victim is a mature female. *Davis v. United States* (D.C. 1979, 396 A.2d 979).

Federal courts no longer require corroboration. — Corroboration of the complainant's testimony is no longer a requirement for conviction in sex offense cases in the District of Columbia federal courts. *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283).

District's corroboration rule still applicable to other offenses. — The holding in *Arnold v. United States* (D.C. App. 1976, 358 A.2d 335), abrogating the corroboration rule, is limited to rape and its lesser included offenses. *Griffin v. United States* (D.C. 1978, 396 A.2d 211).

Trial judge determines whether corroboration required. — Considerable latitude is to be given the trial judge's determination as to whether corroboration of a rape complainant's testimony is to be required, especially in light of his seeing and hearing the victim at trial. *Davis v. United States* (D.C. 1979, 396 A.2d 979).

It is the function of the trial judge to determine whether a rape complainant reveals indications of immaturity effecting credibility so as to require corroboration of her testimony. *Davis v. United States* (D.C. 1979, 396 A.2d 979).

Age of rape complainant alone is not determinative for the purpose of determining whether corroboration evidence is required. *Davis v. United States* (D.C. 1979, 396 A.2d 979).

Merger of rape and kidnapping depends on facts of case. — Every person who commits a rape should not also

be charged and convicted of kidnapping, with its generally more severe penal consequences; rather the facts of each case must be examined to determine whether in fact two separate crimes were committed, or whether they merged. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

In determining whether the separate crimes of rape and kidnapping should be merged, courts will inquire whether the asportation (or seizure) in a given case was of the type incidental to every rape or whether the confinement and restraint were significant enough of themselves to warrant an independent prosecution for kidnapping. *Robinson v. United States* (D.C. 1978, 388 A.2d 1210).

The detention, coercion, or confinement which is an integral part of every rape cannot support a separate conviction for kidnapping. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Defendant not prejudiced by joinder of rape and assault counts. — In a prosecution for rape and assault with intent to rape, joinder of the offenses did not prejudice the defendant where because of the unusual factual similarities between the two offenses charged evidence of each crime would have been admissible in a separate trial of the other to show identity and motive and, in the case of the charge of assault with intent to rape, to show intent. *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Evidence sufficient. — *Crisafi v. United States* (D.C. 1978, 383 A.2d 1).

Cited in *Sampson v. United States* (D.C. 1979, 406 A.2d 574); *Washington v. United States* (D.C. 1979, 404 A.2d 197); *Beck v. United States* (D.C. 1979, 402 A.2d 418); *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

CHAPTER 29.—ROBBERY

§ 22-2901. Robbery.

NOTES TO DECISIONS

Legislative intent. — The legislative history of this section evinces a congressional intent to include pickpocketing and like crimes within the rubric of robbery by inserting the language "by sudden or stealthy seizure or snatching" in the section. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Intent of section. — This section is intended for protection against theft of property from the person, aided by force or violence or by fear caused by the threat of it. *Rouse v. United States* (D.C. 1979, 402 A.2d 1218).

Robbery is a felony. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Possession required. — The victim must be in immediate actual possession of the property at the time of the taking for conviction of robbery. *Rouse v. United States* (D.C. 1979, 402 A.2d 1218).

In robbery, the property taken must have been within the victim's immediate actual possession to convict. *Rease v. United States* (D.C. 1979, 403 A.2d 322).

Under this section if the actions of the accused are responsible for depriving the victim of immediate actual possession, then the jury can properly find the accused guilty of robbery. *Rouse v. United States* (D.C. 1979, 402 A.2d 1218).

Government must prove assault and larceny under a robbery indictment. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Robbery can involve merely stealthy seizure. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Government need not establish that victim unafraid before robber approached. — To establish the element of putting in fear, the government need not establish that the

victim was not in a state of fear before the robber approached. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Identity of perpetrator not technically element of offense. — The identity of the perpetrator of an offense, though an indispensable item of proof by the Government, is not considered an “element” of the crime. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Confession sufficient to link accused to armed robbery. — In cases such as armed robbery where the fact that a crime has been committed can be shown without identifying the perpetrator, there need be no link, outside the confession, between the crime and the accused who admits having committed it. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Corroboration of defendant's admissions. — Where the Government introduced undisputed evidence that an armed robbery had occurred, with several details matching those of the defendant's admissions, there was adequate corroborative evidence supporting the trustworthiness of those admissions. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Defendant's corroborated admissions to police officer could be used to corroborate other admissions. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Robbery and assault with dangerous weapon are lesser included offenses of armed robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

And petit larceny is lesser included offense of robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

But evidence may not warrant instruction on lesser included offenses. — Where the defendant's evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

An instruction on a lesser included offense of petit larceny was not warranted where there was sufficient evidence establishing the robbery element of “putting in fear” to eliminate any fair possibility that the crime, if committed, could be less than robbery. *Dublin v. United States* (D.C. 1978, 388 A.2d 461).

Dual sentences for robbery under federal and District law impermissible. — Dual sentencing for armed bank robbery under the United States Code and armed robbery under the District of Columbia Code is impermissible, and it is the duty of the trial court to select the counts on which to impose sentence when the jury returns verdicts of guilty under both statutes. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Sentence not equivalent to detainer. — The existence of a District of Columbia armed robbery sentence is not remotely equivalent to a detainer lodged by another sovereign under the Interstate Agreement on Detainers. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Evidence sufficient. — *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Christian v. United States* (D.C. 1978, 394 A.2d 1); *In re L.W.* (D.C. 1978, 390 A.2d 435); *Byrd v. United States* (D.C. 1978, 388 A.2d 1225); *Samuels v. United States* (D.C. 1978, 385 A.2d 16); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *Harrison v. United States* (D.C. 1979, 407 A.2d 683); *Jackson v. United States* (D.C. 1979, 404 A.2d 911); *Washington v. United States* (D.C. 1979, 404 A.2d 197); *Bates v. United States* (D.C. 1979, 403 A.2d 1159); *Smothers v. United States* (D.C. 1979, 403 A.2d 306); *Roberts v. United States* (D.C. 1979, 402 A.2d 441); *Beck v. United States* (D.C. 1979, 402 A.2d 418); *Letsinger v. United States* (D.C. 1979, 402 A.2d 411); *Devone v. United States* (D.C. 1979, 401 A.2d 971); *Lampkins v. United States* (D.C. 1979, 401 A.2d 966); *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *In re L.D.O.* (D.C. 1979, 400 A.2d 1055); *Bennett v. United States* (D.C. 1979, 400 A.2d 322); *Coombs v. United States* (D.C. 1979, 399 A.2d 1313); *Vance v. United States* (D.C. 1979, 399 A.2d 52); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Washington v. United States* (D.C. 1979, 397 A.2d 946); *Clark v. United States* (D.C. 1979, 396 A.2d 997); *Fields v. United States* (D.C. 1979, 396 A.2d 990); *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252); *Fraday v. United States Bureau of Prisons* (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Colter v. United States* (D.C. 1978, 392 A.2d 994); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Johnson v. United States* (D.C. 1978, 391 A.2d 1383); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Shambley v. United States* (D.C. 1978, 391 A.2d 264); *In re D.A.S.* (D.C. 1978, 391 A.2d 255); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201); *Cotton v. United States* (D.C. 1978, 388 A.2d 865); *Shelton v. United States* (D.C. 1978, 388 A.2d 859); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Wiggins v. United States* (D.C. 1978, 386 A.2d 1171); *Williams v. United States* (D.C. 1978, 385 A.2d 760); *Bowman v. United States* (D.C. 1978, 385 A.2d 28); *Patterson v. United States* (D.C. 1978, 384 A.2d 663); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Reed v. United States* (D.C. 1978, 383 A.2d 316); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

§ 22-2902. Attempt to commit robbery.

NOTES TO DECISIONS

Elements. — One is guilty of attempted robbery if he commits an act which went beyond mere preparation and was reasonably adapted to the commission of robbery and he acts with specific intent to commit robbery. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

In attempted robbery there must be proof of an intent to rob. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Relationship between disorderly conduct and attempted robbery. — There is an inherent relationship

between the offenses of attempted robbery based on pickpocketing and disorderly conduct, as the “act” elements of both attempted robbery predicated on pickpocketing and disorderly conduct are identical. *Hawkins v. United States* (D.C. 1979, 399 A.2d 1306).

Action beyond mere preparation. — Where defendants had made careful plans, had conducted a dry run of the planned robbery the day before and at the time of their arrest were disguised, heavily armed and proceeding toward the target bank which was less than four blocks away, they had gone beyond mere preparation and were within dangerous proximity of the criminal end sought to be attained, so as to be guilty of attempted robbery. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

When attempted pickpocketing is the factual predicate for a charge of attempted robbery, proof of the

commission of any of the acts enumerated in § 22-1121 (4) amounts to proof of an act which went beyond mere preparation, which is an element of proof necessary for a conviction for attempted robbery. *Hawkins v. United States* (D.C. 179, 399 A.2d 1306).

Evidence sufficient. — *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *Parker v. United States* (D.C. 1979, 406 A.2d 1275); *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201).

CHAPTER 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3101. Forcible entry and detainer.

NOTES TO DECISIONS

Cited in *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).

§ 22-3102. Unlawful entry on property.

NOTES TO DECISIONS

Section 14-305 (b) (1) (A) does not encompass a conviction for unlawful entry. *Bates v. United States* (D.C. 1979, 403 A.2d 1159).

“Bona fide belief” defense. — A reasonable belief in an individual’s right to remain on property not owned or possessed by that individual offered as a defense to this section must be based in the pure indicia of innocence. *Gaetano v. United States* (D.C. 1979, 406 A.2d 1291).

The “bona belief” defense was not meant to, and does not, exonerate individuals who believe they have a right, or even a duty, to violate the law in order to effect a moral, social, or political purpose, regardless of the genuineness of the belief or the popularity of the purpose. *Gaetano v. United States* (D.C. 1979, 406 A.2d 1291).

Rehabilitation of credibility. — If one were lawfully on premises exercising First Amendment rights, then refused to leave upon lawful demand to do so, and was thereupon convicted of unlawful entry under this section, he or she would have an opportunity to rehabilitate credibility by making a “limited explanation” of the circumstances supporting the conviction if the government sought to use it for impeachment. *Bates v. United States* (D.C. 1979, 403 A.2d 1159).

Cited in *Waller v. United States* (D.C. 1978, 389 A.2d 801); *Wynn v. United States* (D.C. 1978, 386 A.2d 695).

CHAPTER 32.—WEAPONS

§ 22-3201. Possession, sale, transfer, and use of dangerous weapons — Definition.

NOTES TO DECISIONS

Weapons control law does not conflict with this chapter. — No direct and positive conflict is apparent between the Firearms Control Regulations Act of 1975 (§ 6-1801 et seq.) and this chapter. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Section 708 of the Firearms Control Regulations Act of 1975 (set out as a note under § 6-1801 in the 1978 Supplement) makes explicit the District of Columbia

Council’s intention to repeal not Title 22 of the District of Columbia Code but those police regulations which have historically established the gun control framework for this jurisdiction. *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

Cited in *Lee v. United States* (D.C. 1979, 402 A.2d 840); *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

§ 22-3202. Committing crime when armed—Added punishment.

NOTES TO DECISIONS

Legislative intent. — The legislative history of this section shows that when Congress in 1971 changed the phrase preceding the list of dangerous or deadly weapons in the introductory paragraph of subsection (a) from “including but not limited to” to just “including,” it intended only to avoid repetitive wording, and not to limit coverage of the section to the weapons listed. *Mitchell v. United States* (D.C. 1979, 399 A.2d 866).

Automobile may be a “dangerous or deadly weapon” within the meaning of this section. *Mitchell v. United States* (D.C. 1979, 399 A.2d 866).

Identity of perpetrator technically not element of offense. — The identity of the perpetrator of an offense, though an indispensable item of proof by the Government, is not considered an “element” of the crime. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Confession sufficient link between accused and crime. — In cases such as armed robbery where the fact that a crime has been committed can be shown without identifying the perpetrator, there need be no link, outside the confession, between the crime and the accused who admits having committed it. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Corroboration of admissions. — Where the Government introduced undisputed evidence that an armed robbery had occurred, with several details matching those of the defendant’s admissions, there was adequate corroborative evidence supporting the trustworthiness of those admissions. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Defendant’s corroborated admissions to police officer could be used to corroborate other admissions. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Conviction reversed where impact of damaging hearsay uncertain. — Defendant’s conviction of second-degree murder while armed was reversed where it could not be said with sufficient certainty that the evidence which was properly admitted was so overwhelming that he was not impermissibly prejudiced by a highly damaging hearsay statement as to his holding a gun to the decedent’s head. *Campbell v. United States* (D.C. 1978, 391 A.2d 283).

First-degree burglary is lesser included offense of first-degree burglary while armed. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Armed robbery presupposes a crime of violence for which a dangerous or deadly weapon is available. *Rouse v. United States* (D.C. 1979, 402 A.2d 1218).

Robbery and assault with dangerous weapon are lesser included offenses of armed robbery. *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Defendant not always entitled to instruction on lesser included offenses. — Where the defendant’s evidence in a prosecution for felony murder and armed robbery was so incredible that it provided no rational basis for a lesser charge of assault with a deadly weapon or simple assault, the trial court was not required to instruct the jury on those lesser included offenses. *Day v. United States* (D.C. 1978, 390 A.2d 957).

Assault with dangerous weapon merged with assault to commit robbery while armed. — Conviction for assault with a dangerous weapon was vacated by the trial judge as having merged with the count of assault with intent to commit robbery while armed. *Forbes v. United States* (D.C. 1978, 390 A.2d 453).

Distinct purposes of felony murder and armed robbery statutes. — The purpose of the armed robbery statute is to protect individuals from being unwillingly deprived of their personal property through the use of armed force, while the felony murder statute purports to protect human life. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Support conclusion that those offenses cannot merge. — There can be no merger of armed robbery and felony murder because the societal interests which Congress sought to protect by enacting this section differ from the societal interests which were meant to be protected by the enactment of § 22-2401 (felony murder). *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

There is nothing in either the armed robbery or the felony murder statute to indicate that Congress intended to vitiate conviction for the underlying crime whenever death resulted during its commission. *Ellis v. United States* (D.C. 1978, 395 A.2d 404).

Duty of trial court. — Section 23-111 (b), dealing with the manner in which prior convictions are presented to the court to enhance sentencing under subsection (a) (2) of this section, requires that the trial court inquire whether the defendant affirms or denies that he has been convicted previously as alleged in the information and inform him that if he does not make his challenge now his opportunity will be lost. *Fields v. United States* (D.C. 1979, 396 A.2d 990).

Previous convictions not requiring mandatory minimum sentence. — Previous robbery convictions which are not convictions for a crime of violence while armed are not crimes requiring a mandatory minimum sentence under subsection (a) (2) of this section. *Fields v. United States* (D.C. 1979, 396 A.2d 990).

Dual sentences under federal and District statutes impermissible. — Dual sentencing for armed bank robbery under the United States Code and armed robbery under the District of Columbia Code is impermissible, and it is the duty of the trial court to select the counts on which to impose sentence when the jury returns verdicts of guilty under both statutes. *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193).

Government estopped from introducing evidence from first trial. — Where in the first trial the jury acquitted defendant of use of an automobile without the owner’s consent, armed robbery and assault with a dangerous weapon, the government was collaterally estopped from having the evidence supporting those counts admitted against the defendant in a second trial charging him with making four sawed-off shotguns, first-degree murder while armed, second-degree murder while armed, unlawful possession of five sawed-off shotguns and being an accessory after the fact to first-degree and second-degree murder. *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252).

Evidence sufficient. — *United States v. Johnson* (1978, 589 F.2d 716, 191 U.S. App. D.C. 193); *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Jackson v. United States* (D.C. 1978, 395 A.2d 99); *Christian v. United States* (D.C. 1978, 394 A.2d 1); *Jones v. United States* (D.C. 1978, 386 A.2d 308); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Stewart v. United States* (D.C. 1978, 383 A.2d 330); *Branch v. United States* (D.C. 1978, 382 A.2d 1033); *Franey v. United States* (D.C. 1978, 382 A.2d 1019).

Cited in *IBN-Tamas v. United States* (D.C. 1979, 407 A.2d 626); *Sampson v. United States* (D.C. 1979, 406 A.2d 574); *Rease v. United States* (D.C. 1979, 403 A.2d 322); *Smothers v. United States* (D.C. 1979, 403 A.2d 306); *Morgan v. United States* (D.C. 1979, 402 A.2d 598); *Roberts v. United States* (D.C. 1979, 402 A.2d 441); *Beck v. United States* (D.C. 1979, 402 A.2d 418); *Letsinger v. United States* (D.C. 1979, 402 A.2d 411); *Sellers v. United States* (D.C. 1979, 401 A.2d 974); *Jones v. United States* (D.C. 1979, 401 A.2d 473); *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *Sousa v. United States* (D.C. 1979, 400 A.2d 1036); *Gillis v. United States* (D.C. 1979, 400 A.2d 311); *Vance v. United States* (D.C. 1979, 399 A.2d 52); *O'Connor v. United States* (D.C. 1979, 399 A.2d 21); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Washington v. United States* (D.C. 1979, 397 A.2d 946); *United States v. Day* (1978, 591 F.2d 861, 192 U.S. App. D.C. 252); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Brooks v. United States* (D.C. 1978, 396 A.2d 200); *Braxton v. United States* (D.C. 1978, 395 A.2d 759); *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Peoples v. United States* (D.C. 1978, 395 A.2d 41); *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Bridges v. United States* (D.C. 1978, 392 A.2d 1053); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Smith v. United States* (D.C. 1978, 392 A.2d 990); *Scott v. United States* (D.C. 1978,

392 A.2d 4); *Gaither v. United States* (D.C. 1978, 391 A.2d 1364); *Adair v. United States* (D.C. 1978, 391 A.2d 288); *Shambley v. United States* (D.C. 1978, 391 A.2d 264); *Smith v. United States* (D.C. 1978, 389 A.2d 1364); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Crews v. United States* (D.C. 1978, 389 A.2d 277); *Sinclair v. United States* (D.C. 1978, 388 A.2d 1201); *Cotton v. United States* (D.C. 1978, 388 A.2d 865); *Brown v. United States* (D.C. 1978, 388 A.2d 451); *Rink v. United States* (D.C. 1978, 388 A.2d 52); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Wright v. United States* (D.C. 1978, 387 A.2d 582); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Cureton v. United States* (D.C. 1978, 386 A.2d 278); *Pynes v. United States* (D.C. 1978, 385 A.2d 772); *Dockery v. United States* (D.C. 1978, 385 A.2d 767); *Williams v. United States* (D.C. 1978, 385 A.2d 760); *Givens v. United States* (D.C. 1978, 385 A.2d 24); *Samuels v. United States* (D.C. 1978, 385 A.2d 16); *Cole v. United States* (D.C. 1978, 384 A.2d 651); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030); *Harling v. United States* (D.C. 1978, 382 A.2d 845); *Nowlin v. United States* (D.C. 1978, 382 A.2d 9); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

§ 22-3203. Unlawful possession of a pistol.

NOTES TO DECISIONS

Cited in *Sampson v. United States* (D.C. 1979, 406 A.2d 574); *Smothers v. United States* (D.C. 1979, 403 A.2d 306); *Clark v. United States* (D.C. 1979, 396 A.2d 997); *Metts v.*

United States (D.C. 1978, 388 A.2d 47); *Jackson v. United States* (D.C. 1978, 385 A.2d 786); *Givens v. United States* (D.C. 1978, 385 A.2d 24).

§ 22-3204. Carrying concealed weapons.

NOTES TO DECISIONS

Legislative intent. — In enacting this section, Congress intended to drastically tighten the ban on carrying dangerous weapons within the District of Columbia. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Congress' goal in enacting this section was to prevent an individual from carrying an unlicensed pistol on the street because of the danger that such a person would pose to the community as a result of the inherent dangerousness of the weapon he carried, and of the absence of any evidence of his capability to carry safely such a dangerous instrument. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Purpose of licensure of weapons. — The District of Columbia has a great interest in protecting its citizenry from the dangers inherent in widespread ownership of weapons, and licensure is a legitimate means of attaining that goal. *McMillen v. United States* (D.C. 1979, 407 A.2d 603).

Offense has three essential elements — carrying an operable pistol without a license with the intent to do those two acts. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Common-law intent inapplicable. — Carrying a pistol without a license is a crime unknown to the common law, and therefore, the common-law criminal intent element does not apply. *McMillen v. United States* (D.C. 1979, 407 A.2d 603).

Exception to this section must be narrowly

circumscribed. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Premise for recognizing an exception to this section is that a defendant's actions did not contravene the section, but instead were motivated by an intent to aid and enhance social policy underlying law enforcement. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

"Place of business" exception refers to proprietary or possessory, not merely managerial, interest. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

This section, does not expressly or implicitly create an exception allowing a person "in charge" of premises to carry a pistol without a license. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Possession for self-defense. — One exception to this section which has been recognized is possession for self-defense. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Carrying a pistol without a license presupposes an operable and unlicensed pistol outside one's own premises or place of business, but not proof that the pistol was used in a robbery or, for that matter, in any other crime. *Rouse v. United States* (D.C. 1979, 402 A.2d 1218).

Use of weapon for extrinsic unlawful purpose. — This section does not require proof of an intent to use the weapon for an extrinsic unlawful purpose. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Pistol under this section is a firearm. *Lee v. United States* (D.C. 1979, 402 A.2d 840).

Operability is an element of the definition of a “pistol” under this section. *Lee v. United States* (D.C. 1979, 402 A.2d 840).

But operability is not required to be specified in an indictment because to be a “pistol,” within the meaning of this section, a firearm must be operable. *Lee v. United States* (D.C. 1979, 402 A.2d 840).

Conviction sustained though pistol disassembled. — A conviction for carrying a pistol without a license can be sustained when all of the parts of a disassembled pistol are shown to have been conveniently accessible to the defendant, those parts can be quickly and easily reassembled into an operable gun and the defendant was observed holding an object that reasonably appeared to be related to the gun. *Rouse v. United States* (D.C. 1978, 391 A.2d 790).

Evidence of possession or convenient access essential. — To support a conviction for carrying a pistol without a license, the record must show some facts manifesting possession or at least convenient access. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Where on the facts a jury could not reasonably find that the defendants had jointly possessed the unlicensed pistol, in the absence of evidence that the defendant in question had carried it, his conviction under this section had to be reversed. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Mere presence of pistol in getaway car insufficient. — Where it was undisputed that only one defendant had carried the weapon during the armed robbery and there was no direct evidence that the other had ever carried or had convenient access to it before, during or after the robbery, conviction under this section was reversed despite strong circumstantial evidence that the unlicensed pistol was in the getaway car in which both defendants were riding, because a contrary ruling would in effect have announced a rule deeming all passengers in a motor vehicle to be carrying a pistol which only one of them has been seen to possess or control. *Jackson v. United States* (D.C. 1978, 395 A.2d 99).

Possession for duration of exigency. — The possession of an unlicensed pistol could be considered to be innocent only for the duration of the exigency dictating that a reasonable course of action is to possess a weapon momentarily. *Logan v. United States* (D.C. 1979, 402 A.2d 822).

Section does not define “felony.” *Scott v. United States* (D.C. 1978, 392 A.2d 4).

“Felony” defined. — A “felony” for the purposes of this section is any offense for which the maximum penalty provided for the offense is imprisonment for more than one year. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Conviction under section cannot be converted into felony offense. — In the same proceeding, a single prior felony conviction may not be used to convert a conviction under this section into a felony offense and to serve as one of the two prior felony convictions for enhanced sentencing under § 22-104a. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Petit larceny is not a felony for purposes of determining the maximum sentences permitted under this section. *Henson v. United States* (D.C. 1979, 399 A.2d 16).

Prior court-martial conviction as felony. — Congress cannot have intended to exclude all court-martial convictions from consideration for enhancement of punishment purposes under this section. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Trial court did not err in characterizing a defendant’s prior court-martial conviction for assault of a superior commissioned officer as a “felony” conviction for the purpose of converting his sentence from a misdemeanor, pursuant to § 22-3215, to a felony. *Scott v. United States* (D.C. 1978, 392 A.2d 4).

Relationship of section to federal provisions. — Since the “unlawful” carrying element of 18 U.S.C. § 924 (c) (2) (punishing unlawfully carrying a firearm during the commission of a felony) involves the offense under this section, dual convictions and separate sentences under 18 U.S.C. § 924 (c) (2) and this section are not authorized. *United States v. Dorsey* (1978, 591 F.2d 922, 192 U.S. App. D.C. 313).

Although dual convictions and separate sentences under this section and 18 U.S.C. § 924 (c) (2) (unlawfully carrying a firearm during the commission of a felony) are not authorized, there is no statutory or constitutional stricture that prevents separate sentences from being imposed for violations of 18 U.S.C. § 922 (k) (receipt of a pistol in interstate commerce with serial number removed) and either 18 U.S.C. § 924 (c) (2) or this section. *United States v. Dorsey* (1978, 591 F.2d 922, 192 U.S. App. D.C. 313).

Because this section involved unlicensed carrying, while 18 U.S.C. § 922 (k) required a removed serial number and an interstate nexus, these two statutory provisions are not the same offense. *United States v. Dorsey* (1978, 591 F.2d 922, 192 U.S. App. D.C. 313).

Involuntary manslaughter may occur as the result of the unlawful act of carrying a pistol without a license despite unforeseeability or unintentionality of death. *Walker v. United States* (D.C. 1979, 403 A.2d 1163).

Evidence sufficient. — *Hamilton v. United States* (D.C. 1978, 395 A.2d 24); *Stewart v. United States* (D.C. 1978, 383 A.2d 330).

Evidence sufficient to prove entrapment. — *United States v. Borum* (1978, 584 F.2d 424, 189 U.S. App. D.C. 266).

Cited in *Timus v. United States* (D.C. 1979, 406 A.2d 1269); *Smothers v. United States* (D.C. 1979, 403 A.2d 306); *Morgan v. United States* (D.C. 1979, 402 A.2d 598); *Grant v. United States* (D.C. 1979, 402 A.2d 405); *Sellers v. United States* (D.C. 1979, 401 A.2d 974); *Middleton v. United States* (D.C. 1979, 401 A.2d 109); *Sousa v. United States* (D.C. 1979, 400 A.2d 1036); *Gillis v. United States* (D.C. 1979, 400 A.2d 311); *Coombs v. United States* (D.C. 1979, 399 A.2d 1313); *Lewis v. United States* (D.C. 1979, 399 A.2d 559); *Duddles v. United States* (D.C. 1979, 399 A.2d 59); *O’Connor v. United States* (D.C. 1979, 399 A.2d 21); *Oesby v. United States* (D.C. 1979, 398 A.2d 1); *Washington v. United States* (D.C. 1979, 397 A.2d 946); *United States v. Sheppard* (1977, 569 F.2d 114, 186 U.S. App. D.C. 283); *United States v. Dixon* (1978, 446 F. Supp. 58); *Fields v. United States* (D.C. 1978, 396 A.2d 522); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Little v. United States* (D.C. 1978, 393 A.2d 94); *Evans v. United States* (D.C. 1978, 392 A.2d 1015); *Glenn v. United States* (D.C. 1978, 391 A.2d 772); *Smith v. United States* (D.C. 1978, 389 A.2d 1356); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Kleinbart v. United States* (D.C. 1978, 388 A.2d 878); *Harling v. United States* (D.C. 1978, 387 A.2d 1101); *Brown v. United States* (D.C. 1978, 387 A.2d 728); *Ward v. United States* (D.C. 1978, 386 A.2d 1180); *Jones v. United States* (D.C. 1978, 385 A.2d 750); *Singletary v. United States* (D.C. 1978, 383 A.2d 1064); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Crosby v. United States* (D.C. 1978, 383 A.2d 351); *Alston v. United States* (D.C. 1978, 383 A.2d 307).

§ 22-3205. Exceptions to section 22-3204.

NOTES TO DECISIONS

Special police officer, who has been commissioned pursuant to § 4-115, will be considered a policeman or law-enforcement officer within the meaning of this section

only to the extent that he acts in conformance with the regulations governing special officers. *Timus v. United States* (D.C. 1979, 406 A.2d 1269).

§ 22-3206. Issue of licenses to carry pistol.

NOTES TO DECISIONS

Cited in *Bethea v. United States* (D.C. 1978, 395 A.2d 787).

§ 22-3212. Alteration of identifying marks of weapons prohibited.

NOTES TO DECISIONS

Cited in *Duddles v. United States* (D.C. 1979, 399 A.2d 59).

§ 22-3214. Possession of certain dangerous weapons prohibited — Exceptions.

NOTES TO DECISIONS

Purpose of section. — The legislative desire behind this section was enhanced punishment for possession of weapons. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Proof required. — This section demands proof of possession in a specific intent to use a weapon unlawfully against another, but does not require evidence of an attempt to do harm. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Furniture leg may be a dangerous weapon and its momentary possession supportive of a conviction for possession of a prohibited weapon in violation of this section. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Assault and possession of a prohibited weapon are separate and distinct offenses. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Proper not to sever shotgun count from trial for stabbing murder. — In a trial for murder in which the

victim was stabbed with a knife, the trial court did not err in denying the defendant's motion to sever the third count of the indictment charging illegal possession of a sawed-off shotgun, since a reasonable mind could have concluded from the evidence that he had had the shotgun in his possession when he assaulted the deceased and could have used either the gun or the knife in that assault. *Dockery v. United States* (D.C. 1978, 385 A.2d 767).

Cited in *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.); *Hill v. United States* (D.C. 1979, 404 A.2d 525); *Duddles v. United States* (D.C. 1979, 399 A.2d 59); *McBride v. United States* (D.C. 1978, 393 A.2d 123); *Allen v. United States* (D.C. 1978, 383 A.2d 363); *Jefferson v. United States* (D.C. 1978, 382 A.2d 1030).

§ 22-3215. Penalties.

NOTES TO DECISIONS

Cited in *Henson v. United States* (D.C. 1979, 399 A.2d 16); *Scott v. United States* (D.C. 1978, 392 A.2d 4).

CHAPTER 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts — Children.

NOTES TO DECISIONS

Assault included offense. — No one could commit an indecent act without also committing an assault. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Consent by child is no defense to this section. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Uncorroborated testimony of minor victim. — A defendant cannot be found guilty under this section on the basis of the uncorroborated testimony of a minor victim. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Sufficiency of evidence to sustain conviction. — A conviction under this section cannot stand unless there is sufficient evidence to convince the trier of fact that the victim's testimony was not a fabrication. *Hall v. United States* (D.C. 1979, 400 A.2d 1063).

Cited in *In re C.W.M.* (D.C. 1979, 407 A.2d 617); *In re H.M.* (D.C. 1978, 386 A.2d 707); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

§ 22-3502. Sodomy.

NOTES TO DECISIONS

Court's failure to give required corroboration instruction was harmless error where the circumstances provided adequate independent evidence that accusations of sodomy and assault with intent to commit rape were not a fabrication. *Williams v. United States* (D.C. 1978, 385 A.2d 760).

Cited in *Washington v. United States* (D.C. 1979, 404 A.2d 197); *Beck v. United States* (D.C. 1979, 402 A.2d 418);

Hall v. United States (D.C. 1979, 400 A.2d 1063); *Johnson v. United States* (D.C. 1979, 398 A.2d 354); *Colter v. United States* (D.C. 1978, 392 A.2d 994); *Sellman v. United States* (D.C. 1978, 386 A.2d 303); *Douglas v. United States* (D.C. 1978, 386 A.2d 289); *Williams v. United States* (D.C. 1978, 382 A.2d 1).

CHAPTER 36.—IMPLEMENTS OF CRIME

§ 22-3601. Possession of implements of crime — Penalty.

NOTES TO DECISIONS

Cited in *Lampkins v. United States* (D.C. 1979, 401 A.2d 966); *In re J.G.J.* (D.C. 1978, 388 A.2d 472).

TITLE 23.—CRIMINAL PROCEDURE

Cross references. For Criminal Justice Advisory Board, see § 2-2501 et seq. For registration of state officials entering District to enforce laws relating to alcoholic beverages or tobacco or to conduct an investigation or surveillance, see § 4-1101 et seq. For adjudication of certain traffic offenses, see § 40-1101 et seq.

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CHAPTER 1. — GENERAL PROVISIONS

§ 23-101. Conduct of prosecutions.

NOTES TO DECISIONS

Violations against single sovereign. — Violations of the District of Columbia Code and violations of the United States Code are all crimes against a single sovereign, namely, the United States. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Prosecutions maintained in name of United States. — This section provides that all crimes prosecuted under the District of Columbia Code are maintained in the name of the United States. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Cited in *In re Kossow* (D.C. 1978, 393 A.2d 97).

§ 23-104. Appeals by United States and District of Columbia.

NOTES TO DECISIONS

Constitution bars appeal and retrial after dismissal for insufficient evidence. — The Double Jeopardy Clause of the Fifth Amendment does not bar government appeal and retrial after a dismissal unless it was premised on some factual determination of the insufficiency of the evidence of the defendant's guilt. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044, 190 U.S. App. D.C. 63).

Appeal and retrial proper where prosecution allegedly withheld exculpatory material. — A dismissal or mistrial ruling predicated on *Brady v. Maryland* (1963, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215) (relating to the prosecution's failure to disclose exculpatory material to the defense) and granted on defendant's motion is answerable to appellate review and does not bar retrial if the appellate court finds no *Brady* violation. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044, 190 U.S. App. D.C. 63).

Or failed to inform court of potential jury contamination. — Prosecutorial misconduct in failing to inform the court of potential jury contamination prior to the impaneling and swearing in of the jurors did not warrant erecting double jeopardy bar to retrial of defendant. *United States v. Harvey* (D.C. 1978, 392 A.2d 1049).

Standards on review. — Review must afford appellees all legitimate inferences from the testimony and uncontroverted facts of record, and the appellate court must accept the inferences drawn by the trial court as to the facts before it if they are supportable under any reasonable view of the evidence. *United States v. Covington* (D.C. 1978, 385 A.2d 164).

Pretrial government appeal time as factor when defendant claims unconstitutional delay. — Pretrial government appeal time, whether short or long, will generally be a factor against the government when a defendant claims an unconstitutional pretrial delay unless the prosecutor moves to expedite the appeal under the authority of subsection (e). *Day v. United States* (D.C. 1978, 390 A.2d 957).

Motions to suppress must be made prior to trial under this section unless a defendant can show good cause for failure to do so. *Duddles v. United States* (D.C. 1979, 399 A.2d 59).

Exceptions to pretrial motion. — This section provides two exceptions to the requirement of a pretrial motion, i.e., when a defendant can demonstrate that he did not have an opportunity to file a motion before trial, or that he was unaware of the grounds for the motion. *Duddles v. United States* (D.C. 1979, 399 A.2d 59).

Cited in *York v. District of Columbia* (D.C. 1979, 407 A.2d 695); *District of Columbia v. M.E.K.* (D.C. 1979, 407 A.2d 655); *United States v. Brannon* (D.C. 1979, 404 A.2d 926); *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84); *United States v. Hamilton* (D.C. 1978, 390 A.2d 449); *Springer v. United States* (D.C. 1978, 388 A.2d 846); *United States v. Davis* (D.C. 1978, 387 A.2d 1091); *United States v. Pannell* (D.C. 1978, 383 A.2d 1078); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

§ 23-106. Witnesses for defense; fees.

NOTES TO DECISIONS

Limitation on ordering personal testimony of certain officers. — Cabinet members and chief administrative officials should not be called to testify personally unless a clear showing is made that such a proceeding is essential

to prevent prejudice or injustice to the party requesting the testimony. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 23-110. Remedies on motion attacking sentence.

NOTES TO DECISIONS

- I. General Consideration.
- II. Grant of Hearing.

I. GENERAL CONSIDERATION.

Section is substantially identical to 28 U.S.C. § 2255, and federal court interpretations of that section provide guidance in construing this section. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Butler v. United States* (D.C. 1978, 388 A.2d 883).

Section has no application in civil commitment context. *Bension v. Meredith* (1978, 455 F. Supp. 662).

But does apply in context of certain new trial motions. — If a convict pending appeal has moved the trial court for a new trial and asserted grounds in his motion that would be cognizable under this section, and the government's remedy upon vacation of the sentence would be a new trial, then that motion should be considered as a motion under this section. *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

Section should not produce mechanical jurisprudence triggered merely by an artful allegation of facts dehors the record on appeal. *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Gregg v. United States* (D.C. 1978, 395 A.2d 36).

Noncompliance with formalities of criminal procedure rule is not collaterally reviewable unless the claimed error of law was a fundamental defect which inherently resulted in a complete miscarriage of justice. *Butler v. United States* (D.C. 1978, 388 A.2d 883).

Effective counsel not denied where tactical value of alibi defense questionable. — The trial court did not err in denying a motion to vacate a sentence on the contention that the defendant was denied effective assistance of counsel due to counsel's failure to assert an alibi defense, where the tactical disadvantages of such defense outweighed its evidentiary value. *Wright v. United States* (D.C. 1978, 387 A.2d 582).

Nor where erroneous advice insignificant to plea. — Order denying relief under this section was affirmed where the record supported the trial court's finding that counsel's erroneous advice was an insignificant factor in the prisoner's decision to plead guilty. *Bailey v. United States* (D.C. 1978, 385 A.2d 32).

Nor where attorney effectively presented sole substantial defense. — Where the only substantial defense ever alleged by defendant was his lack of knowledge of the offense, and his counsel placed the essence of that defense before the jury in a reasonably effective manner, the trial judge was correct in denying defendant's motion for a new trial pursuant to this section. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

But increase in sentence after service commenced invalid. — Where a court granted a prisoner's request that his sentence be modified to run concurrently with a previously imposed sentence, but one week later the court

issued another order denying the prisoner's request, the latter order was invalid as a constitutionally prohibited increase in sentence after service had commenced. *United States v. Robinson* (D.C. 1978, 388 A.2d 469).

Strict principles of res judicata inapplicable to these proceedings. — Although at some point the limitation of subsection (e) on successive motions becomes applicable, strict principles of res judicata do not apply in proceedings under this section. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Federal jurisdiction over claim of person never convicted. — Subsection (g) did not remove jurisdiction from the Federal courts where habeas corpus relief was sought by a person who was not convicted because a mistrial had been called and his case had never gone to the jury. *Sedgwick v. Superior Court* (1978, 584 F.2d 1044, 190 U.S. App. D.C. 63).

II. GRANT OF HEARING.

Standards for summary denial without hearing. — A court may summarily deny a motion under this section only when the motion, files or other records contain data which belie the prisoner's claim and such contradiction is not susceptible of reasonable explanation. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

In denying a motion without a hearing, the court must conclude that under no circumstances could the petitioner establish facts warranting relief. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Weighted in favor of prisoner. — Because this section provides a habeas corpus type remedy for District of Columbia prisoners, any question whether a hearing is appropriate should be resolved in the affirmative. *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Because this section is a remedy of virtually last resort, any question whether a hearing is appropriate should be resolved in the affirmative. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Especially where he alleges ineffective assistance of counsel. — Where a motion under this section not only contains allegations which, if true, merit relief and are not vague, conclusory or wholly incredible, but also alleges ineffective assistance of counsel, the necessity for a hearing is increased because the nature of the complaint, i.e., ineffective assistance of counsel which resulted in a plea of guilty, may necessarily involve matters outside the record. *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

But hearing not automatic even when effectiveness of counsel challenged. — A motion for new trial alleging ineffective assistance of counsel does not automatically require a hearing. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Where all of defendant's allegations concerning ineffective assistance of counsel related solely to facts already in the record and only required the trial court to apply the correct legal standard to reach its conclusion as to the merits of the claim, and the facts of the record conclusively showed that he was entitled to no relief, the appellate court upheld the trial court's decision not to conduct a hearing. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Hearing required. — *Gibson v. United States* (D.C. 1978, 388 A.2d 1214); *Johnson v. United States* (D.C. 1978, 385 A.2d 742).

Three categories of claims do not merit hearings: (1) palpably incredible claims, (2) assertions which even if true would not entitle the movant to relief under the terms of subsection (a) and (3) vague and conclusory allegations. *Gregg v. United States* (D.C. 1978, 395 A.2d 36); *Pettaway v. United States* (D.C. 1978, 390 A.2d 981); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Claims must withstand some checking for verity. — Just as palpably incredible claims can be summarily dismissed, so also can those claims which cannot withstand initial checking for verity or, at the least, the probability of verity. *Gregg v. United States* (D.C. 1978, 395 A.2d 36).

And must state claim requiring vacation or alteration of sentence. — If it appears that the motion does not state a claim which if established would require the vacation or alteration of the sentence, no hearing is required. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Specifications of motion under this section must indicate the absence of a fair trial in the real sense of that

term, must not be couched in conclusory terms with essentially no factual foundation and, even if true, must not be patently frivolous on their face. *Glass v. United States* (D.C. 1978, 395 A.2d 796); *Gibson v. United States* (D.C. 1978, 388 A.2d 1214).

Motion must explain exact nature of alleged ineffectiveness of counsel. — The trial court is not required to conduct a hearing on a motion under this section alleging ineffective assistance of counsel if the exact nature of the asserted ineffectiveness is not explained in the motion. *Glass v. United States* (D.C. 1978, 395 A.2d 796).

Vague and conclusory motions dismissed without hearing. — A motion is vulnerable to dismissal as vague and conclusory when a prisoner does not present a factual foundation in some detail. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Claim under this section challenging the voluntariness of the claimant's guilty plea and his attorney's effectiveness and alleging promises of a sentence of about five years and a sentence reduction after a year or so was too vague and conclusory to necessitate a hearing. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

Claims which survive vagueness test may not necessarily be ripe for full evidentiary hearings; in some instances a motion for summary judgment is a more appropriate way to proceed initially. *Pettaway v. United States* (D.C. 1978, 390 A.2d 981).

§ 23-111. Proceedings to establish previous convictions.

NOTES TO DECISIONS

Strict compliance is to be followed under this section. *Fields v. United States* (D.C. 1979, 396 A.2d 990).

Requirements under subsection (b). — Subsection (b) of this section, dealing with the manner in which prior convictions are presented to the court to enhance sentencing, requires that the trial court inquire whether the defendant affirms or denies that he has been convicted previously as alleged in the information and inform him

that if he does not make his challenge now his opportunity will be lost. *Fields v. United States* (D.C. 1979, 396 A.2d 990).

Cited in *Grant v. United States* (D.C. 1979, 402 A.2d 405); *Ellis v. United States* (D.C. 1978, 395 A.2d 404); *Scott v. United States* (D.C. 1978, 392 A.2d 4); *Kleinbart v. United States* (D.C. 1978, 388 A.2d 878).

§ 23-112. Consecutive and concurrent sentences.

NOTES TO DECISIONS

Preference for consecutive sentences. — This section expresses a statutory preference that consecutive sentences be imposed when an individual is convicted of two or more offenses, even if the convictions arise out of the same act or transaction. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Concurrent sentences are prescribed when a single act or transaction constitutes two criminal offenses, unless the offenses are separate and distinct, and there is a clear legislative intent to provide for consecutive punishment. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Two offenses are separate and distinct when each criminal provision violated requires proof of an additional fact which the other does not. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Defendant committing single homicide cannot be given consecutive sentences for first-degree murder and another homicide crime. *McFadden v. United States* (D.C. 1978, 395 A.2d 14).

Cited in *United States v. Frady* (1979, 607 F.2d 383, U.S. App. D.C. ; *Allen v. United States* (D.C. 1978, 383 A.2d 363).

CHAPTER 3. — INDICTMENTS AND INFORMATIONS

Subchapter II. — Joinder

§ 23-311. Joinder of offenses and of defendants.

NOTES TO DECISIONS

Subsection (c) of this section codifies Super. Ct. Cr. R. 8 (b) which is identical to Fed. R. Crim. P. 8 (b). *Sousa v. United States* (D.C. 1979, 400 A.2d 1036).

Risk of prejudice when offenses of similar character joined for trial. — When offenses of a “similar character” are joined at trial there is a substantial risk of prejudice. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Similar characteristics too speculative to permit joinder for trial. — Any characteristics of possible

similarity between two burglary offenses were too speculative to identify with sufficient certainty the defendant as a perpetrator of both of the crimes, and therefore the offenses should have been severed for trial. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Cited in *Hackney v. United States* (D.C. 1978, 389 A.2d 1336); *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

§ 23-313. Relief from prejudicial joinder.

NOTES TO DECISIONS

Risk of prejudice when offenses of similar character joined for trial. — When offenses of a “similar character” are joined at trial there is a substantial risk of prejudice. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

So that severance should be granted absent special circumstances. — When joinder of offenses is based on the fact that the crimes are of a “similar character,” a motion to sever should be granted unless (1) the evidence as to each offense is separate and distinct and thus unlikely to be amalgamated in the jury’s mind into a single inculpatory mass or (2) the evidence of each of the joined crimes would be admissible at the separate trial of the others. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Characteristics of possible similarity between two burglary offenses were too speculative to identify with sufficient certainty the defendant as a perpetrator of both of the crimes, and therefore the offenses should have been severed for trial. *Evans v. United States* (D.C. 1978, 392 A.2d 1015).

Residual potential for prejudice was outweighed by economy and efficiency interests in trying two counts of robbery together, for evidence of the second robbery would have been fully admissible in a separate trial of the first even though evidence of the first robbery would have been only partially admissible in a separate trial of the second. *Samuels v. United States* (D.C. 1978, 385 A.2d 16).

Defendant appealing prejudicial joinder must show clear abuse of discretion. — To convince an appellate court that he has been prejudiced by joinder, a defendant must demonstrate a clear abuse of discretion by the trial court, and no such abuse can be found unless it appears (1) that the jury may have cumulated evidence of separate crimes to find guilt, (2) that the jury may have improperly inferred a criminal disposition and treated the inference as evidence of guilt or (3) that the defendant may have become embarrassed or confounded in presenting defenses to different charges. *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

Trial court did not err in denying motion to sever the counts of an indictment involving one murder, about which the defendant wished to testify, from those charging him with three other related murders. *Strickland v. United States* (D.C. 1978, 389 A.2d 1325).

Trial court’s refusal to sever three homicide counts was proper where evidence of all the charges against the defendant would have been mutually admissible at each of the separate trials had the severance motion been granted and where the evidence showed the existence of a common scheme or plan. *Hackney v. United States* (D.C. 1978, 389 A.2d 1336).

Cited in *Grant v. United States* (D.C. 1979, 402 A.2d 405).

Subchapter III. — Sufficiency

§ 23-323. Perjury.

NOTES TO DECISIONS

Section is purely procedural. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Compliance with this section and court rule satisfies constitutional criteria. — Compliance with Super. Ct. Cr. R. 7 (c) and this section satisfies the constitutional criteria of *Russell v. United States* (1962, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240), which provided that an indictment

must contain all the elements of the offense charged, must sufficiently apprise the defendant of the charges so that he can prepare to meet them and must be clear enough, when coupled with the record of the proceedings, to preclude double jeopardy. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Section does not modify rule's balance between specificity and conciseness. — Court rejected the argument that when the government indicts for perjury, this section modifies the balance struck between specificity and conciseness in Super. Ct. Cr. R. 7 (c), governing the form of indictments. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Section and rule require same allegations of falsity. — As to the allegations of falsity required for a valid perjury indictment, the procedural requirements of this section and Super. Ct. Cr. R. 7 (c) are the same. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Perjury indictment must allege falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Indictment clearly charged making of false statements. — Where an indictment in language similar to the perjury statute charged that the defendant "having taken an oath that he would testify truly, did unlawfully, wilfully, knowingly and contrary to such oath, state material matters which he did not believe to be true," this language clearly charged appellant with making false statements, i.e., he took an oath to testify truthfully and did not do so. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

And sufficed to inform defendant of charge. — Where in addition to repeating the statutory language the indictment referred to the defendant's oath before the judge and further specified the question and offending answer he allegedly gave, this sufficed to inform the defendant of the alleged falsity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Simple allegation as to materiality did not render indictment deficient for lack of specificity. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

Alleged perjury material despite testimony admitting partial falsehood. — Even if the defendant's acknowledgment set forth in his perjury indictment, that he had learned about a temporary restraining order prior to the date set for hearing on the order to show cause, had constituted an admission of contempt for failure to comply with an order actually received, that admission would not necessarily negate the materiality of his denial of service of the restraining order, which related to his contumacy between service and the admitted receipt of notice and was the gravamen of the perjury indictment. *Hsu v. United States* (D.C. 1978, 392 A.2d 972).

CHAPTER 5. — WARRANTS AND ARRESTS

Subchapter I. — Definitions

§ 23-501. Definitions.

NOTES TO DECISIONS

Deputy U.S. Marshall assigned to courtroom security detail was law enforcement officer within the meaning of this section. *Lucas v. United States* (1977, 443 F. Supp. 539, aff'd, 1979, 590 F.2d 356).

Cited in *United States v. Boettcher* (1978, 588 F.2d 89).

Subchapter III. — Wire Interception and Interception of Oral Communications

§ 23-541. Definitions.

NOTES TO DECISIONS

Pen registers not within scope of wiretapping law. — Pen registers, which record outgoing numbers called on a particular telephone line, are not prohibited or regulated

by the wiretap provisions of the District of Columbia Code. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 23-546. Applications for authorization or approval of interception of wire or oral communications.

NOTES TO DECISIONS

Additional authorization required when communication relates to offense outside subsection (c). — This section requires additional authorization when the contents of a communication relate to an offense other than those listed in subsection (c). *Davis v. United States* (D.C. 1978, 390 A.2d 976).

But evidence not necessarily suppressed for failure to seek additional authorization. — Where the initial authorization of a wiretap was proper and the court was informed from the beginning of the range of offenses under investigation, the government's failure to seek additional authorization to intercept communications relating to an offense not enumerated in subsection (c) did

not prevent use of that wiretap evidence at trial. *Davis v. United States* (D.C. 1978, 390 A.2d 976).

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications.

NOTES TO DECISIONS

General recognition that wiretaps neither initial step nor last resort. — In construing 18 U.S.C. § 2518 (1) (c) and (3) (c), courts have interpreted the requirement also appearing in subsections (a) (3) and (c) (3) of this section

flexibly, recognizing that wiretaps are neither a routine initial step nor an absolute last resort. *United States v. Williams*, 580 F.2d 578, 188 U.S. App. D.C. 315, cert. denied, 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127 (1978).

§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications.

NOTES TO DECISIONS

Movant to suppress must have standing. — Before an accused may complain that prosecution evidence obtained by electronic eavesdropping should be suppressed because it was come by illegitimately, he must first establish his standing; that is, he must show that the eavesdropping

was directed at him, that the government intercepted his conversations or that the wiretapped communications occurred at least partly on his premises. *United States v. Williams*, 580 F.2d 578, 188 U.S. App. D.C. 315, cert. denied, 439 U.S. 832, 99 S. Ct. 112, 58 L. Ed. 2d 127 (1978).

Subchapter IV.—Arrest Warrant and Summons

§ 23-561. Issuance, form, and contents.

NOTES TO DECISIONS

Warrant held issued under law of United States. — Felony arrest warrant issued under this section and directed to any United States Marshal for service within the United States was issued under a “law of the United

States” within the meaning of 18 U.S.C. § 1071 (proscribing the harboring of persons in order to prevent their arrest). *United States v. Boettcher* (1978, 588 F.2d 89).

§ 23-562. Execution and return.

NOTES TO DECISIONS

Right to prompt presentment is fundamental constitutional right. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

Standard for evaluating pre-presentment procedures. — Police processing procedures before presentment to a magistrate violate the Fourth Amendment unless they detain the arrestee only so long as needed to complete the administrative steps incident to arrest. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

The police can justify each delay before presentment only by a strong showing that it is necessitated by a

substantial administrative need. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

Police procedures which unconstitutionally delayed presentment before a magistrate included lineups, interviews and the completion of forms which could have been accomplished after presentment or from other sources, fingerprinting and photographing which could easily have followed presentment, and failure to consider processing and presentment times when training and scheduling personnel. *Lively v. Cullinane* (1978, 451 F. Supp. 1000).

§ 23-563. Territorial and other limits.

NOTES TO DECISIONS

Nation-wide reach exercise of national legislative power. — In giving warrants under subsection (a) nation-wide reach, Congress was exercising its power as a national and not as a strictly local legislature. *United States v. Boettcher* (1978, 588 F.2d 89).

Warrant invalid as matter of law. — Where a computer printout which police officers examined prior to an arrest indicated that the arrest warrant for a misdemeanor had

been issued approximately 18 months previously, the officers knew or reasonably should have known that that warrant was invalid as a matter of law, and the arrestee thus had an action for false arrest and imprisonment. *Woodward v. District of Columbia* (D.C. 1978, 387 A.2d 726).

Cited in *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Subchapter V.—Arrest Without Warrant

§ 23-581. Arrests without warrant by law enforcement officers.

NOTES TO DECISIONS

Section is for most part a codification of common law. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Ultimate misdemeanor charge would not necessarily invalidate arrest under subsection (a) (1) (A). — The fact that a defendant was charged with a misdemeanor violation of § 33-402 (a) did not preclude finding his arrest valid under subsection (a) (1) (A). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Lawful arrest under subsection (a) (1) (A). — Police officer effected lawful arrest under subsection (a) (1) (A) where he acted in reliance on information provided by his partner, who had purchased a narcotic pill from the defendant and her companion, and where he was aware that such a sale could have supported a federal felony charge. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Under subsection (a) (1) (B). — Where a deputy U.S. Marshall legally detained party outside a courthouse for questioning regarding a possible breach of security at a courtroom and requested a driver's license for identification, whereupon the detainee forcibly grabbed the deputy, there was probable cause to arrest him under subsection (a) (1) (B) for assaulting and interfering with a

federal officer in the performance of his official duties. *Lucas v. United States* (1977, 443 F. Supp. 539, aff'd, 1979, 590 F.2d 356).

Officer may assert probable cause to arrest in defense of suit. — Under the common law of the District of Columbia, probable cause to effectuate an arrest is a defense available to a law enforcement officer sued for the torts of assault, battery and false arrest. *Lucas v. United States* (1977, 443 F. Supp. 539, aff'd, 1979, 590 F.2d 356).

Meaning of probable cause in that context. — An officer defending a civil suit for assault, battery and false arrest need not prove probable cause in the constitutional sense but only his good faith and reasonable belief that probable cause existed for the arrest. *Lucas v. United States* (1977, 443 F. Supp. 539, aff'd, 1979, 590 F.2d 356).

Scope of authority to arrest on misdemeanor drug charges. — Prior to the enactment of § 33-402 (b), a police officer could not effect an arrest on misdemeanor drug charges unless he had personally observed commission of the offense. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

CHAPTER 13.—PRETRIAL SERVICES AGENCY AND PRETRIAL DETENTION

Subchapter I.—District of Columbia

Sec. Pretrial Services Agency

23-1301. District of Columbia Pretrial Services Agency.

Sec.

23-1309. References to "Bail Agency" deemed to be to "Pretrial Services Agency."

Subchapter I.—District of Columbia Pretrial Services Agency

§ 23-1301. District of Columbia Pretrial Services Agency.

The District of Columbia Pretrial Services Agency (hereafter in this subchapter referred to as the "Agency") shall continue in the District of Columbia and shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information

concerning any individual with respect to whom a bail or citation determination is to be made. (July 29, 1970, Pub. L. 91-358, § 210 (a), title II, 84 Stat. 639; Sept. 27, 1978, Pub. L. 95-388, §§ 1, 2, 92 Stat. 753.)

Effect of Amendment.

1978 — Act Sept. 27, 1978, Pub. L. 95-388, 92 Stat. 753, amended section by striking out “District of Columbia Bail Agency” and inserting “District of Columbia Pretrial Services Agency” and by changing the heading of the

section to “District of Columbia Pretrial Services Agency.” Act also changed title of chapter 13 to “Pretrial Services Agency and Pretrial Detention” and title of subchapter I to “District of Columbia Pretrial Services Agency.”

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1309. References to “Bail Agency” deemed to be to “Pretrial Services Agency.”

Any reference in any law, rule, regulation, document, or record of the United States or the District of Columbia to the District of Columbia Bail Agency shall be deemed to be a reference to the District of Columbia Pretrial Services Agency. (Sept. 27, 1978, Pub. L. 95-388, § 3, 92 Stat. 753.)

Subchapter II.—Release and Pretrial Detention

§ 23-1321. Release in noncapital cases prior to trial.

NOTES TO DECISIONS

Amount of bond. — If a money bond is to be used to assure appearance, it need not be set at an amount which the accused can afford. *Ireland v. United States* (D.C. 1979, 406 A.2d 1259).

The trial court is not required to impose a money bail which will guarantee a defendant’s pretrial liberty. *Ireland v. United States* (D.C. 1979, 406 A.2d 1259).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1322. Detention prior to trial.

NOTES TO DECISIONS

Limited detention permissible. — Ordered pretrial detention is permissible under this section, limited to a very specific category of persons deemed dangerous. *Ireland v. United States* (D.C. 1979, 406 A.2d 1259).

Constitutional standard that must be satisfied before pretrial detention is permitted is the same as that for arrest — probable cause to believe that the suspect has committed a crime. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detention must not violate detainee’s right to bail. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Due process denied where detainee not advised of probation revocation proceeding. — Due process rights

of defendant, who was arrested for robbery and was at that time on conditional probation following a conviction of sodomy, were violated where at his presentment he was ordered held without bail pursuant to subsection (e) but the record failed to show that he was apprised of when a probation revocation hearing would take place or of the specific grounds on which the government intended to seek revocation. *Colter v. United States* (D.C. 1978, 392 A.2d 994).

Standard for measuring constitutionality of conditions of pretrial confinement. — Absent a violation of specific constitutional guarantees, the constitutionality of the conditions of pretrial confinement can be measured only by balancing the liberty interests of the pretrial

detainee against the need of the state to protect the safety of the community. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detainees generally retain more rights than convicted prisoners. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Particular entitlements judicially ordered. — Appellate court approved orders of federal district court ensuring that pretrial detainees at the District of Columbia

jail would be provided a minimum space of their own, a regular change of linen and outer clothing, daily recreation, prompt psychiatric care, carefully regulated use of restraints and a rational security classification to prevent excessively harsh confinement and possibly to prepare the way for contact visits. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Cited in *Pierce v. United States* (D.C. 1979, 402 A.2d 1237); *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

§ 23-1323. Detention of addict.

NOTES TO DECISIONS

This section is limited to situations where danger is contemplated. *Ireland v. United States* (D.C. 1979, 406 A.2d 1259).

Anticipated flight. — This section does not contemplate an order of detention because of anticipated flight. *Ireland v. United States* (D.C. 1979, 406 A.2d 1259).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1324. Appeal from conditions of release.

NOTES TO DECISIONS

Cited in *Ireland v. United States* (D.C. 1979, 406 A.2d 1259); *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 23-1325. Release in capital cases or after conviction.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258); *Harvey v. United States* (D.C. 1978, 385 A.2d 36).

§ 23-1326. Release of material witnesses.

NOTES TO DECISIONS

Cited in *Christian v. United States* (D.C. 1978, 394 A.2d 1).

§ 23-1327. Penalties for failure to appear.

NOTES TO DECISIONS

Bail Reform Act is constitutionally sound. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

Elements of willful failure to appear are release pending trial or sentencing; requirement to appear; failure to appear; and that failure being willful. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

Prima facie case. — If the government proves that factual circumstances imply that a defendant's actions were willful, it rationally and constitutionally meets its burden to prove a prima facie case under this section. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

Permissible inference of willfulness. — The Bail Reform Act does not shift the burden to defendant to disprove the presumed existence of the element of willful failure to appear but it merely creates, for the trier of fact, a permissible inference of willfulness based on a showing of notice and failure to appear. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

Although the wording of subsection (b) of this section may be read to imply that the inference of willfulness is mandatory, it appears that in practice the trier of fact has merely been permitted, and not required, to infer

willfulness. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

The Bail Reform Act merely allows the government to prove defendant's state of mind by establishing circumstances from which the trier of fact may, but is not required to, reasonably infer the requisite state of mind. *Raymond v. United States* (D.C. 1979, 396 A.2d 975).

Any sentence for failure to appear must be consecutive to any other sentence of imprisonment. *Davis v. United States* (D.C. 1979, 397 A.2d 951).

Evidence sufficient. — *Burgos v. United States* (D.C. 1979, 404 A.2d 532).

Cited in *Grant v. United States* (D.C. 1979, 402 A.2d 405); *Keith v. Washington* (D.C. 1979, 401 A.2d 468); *Reavis v. United States* (D.C. 1978, 395 A.2d 75); *Choco v. United States* (D.C. 1978, 383 A.2d 333).

§ 23-1328. Penalties for offenses committed during release.

NOTES TO DECISIONS

Cited in *Harvey v. United States* (D.C. 1978, 395 A.2d 92); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

TITLE 24.—PRISONERS AND THEIR TREATMENT

Cross reference. For Criminal Justice Advisory Board, see § 2-2501 et seq.

| Chap. | Sec. |
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CHAPTER 1.—PROBATION

§ 24-103. Investigations and reports by probation officers.

NOTES TO DECISIONS

Cited in *People’s Counsel v. Public Serv. Comm’n* (D.C. 1979, 399 A.2d 43).

§ 24-104. Discharge from or continuance of probation — Modification or revocation of order.

NOTES TO DECISIONS

This section is drawn broadly to give the court great leeway and flexibility to tailor the decision on probation to each probationer’s needs. *Jacobs v. United States* (D.C. 1979, 399 A.2d 38).

Revocation of probation is a matter of judicial discretion. *Jones v. United States* (D.C. 1979, 401 A.2d 473).

Revocation of probation is within the court’s discretion when the probationer commits offenses of such nature as to demonstrate to the court that he is unworthy of probation and that the granting of same would not be in subservience of the ends of justice and the best interests of the public, or the probationer. *Jacobs v. United States* (D.C. 1979, 399 A.2d 38).

Probation revocation hearing must accord due process. — The power to revoke probation given by this section must be exercised by informed discretion based upon a hearing in accordance with due process

requirements. *Jacobs v. United States* (D.C. 1979, 399 A.2d 38).

Oral pronouncement prevailed over conflicting written order as to term of original sentence. — Where on one count of uttering an instrument with intent to defraud the trial judge pronounced a suspended sentence of one to three years with two years of probation and restitution as a condition of probation, but on the same day he signed a judgment and probation order stating the suspended term of imprisonment to be from one to two years, the oral pronouncement prevailed over the written order because the former was clear and unambiguous, and therefore the judge who imposed a one to three year sentence upon revocation of probation did not place defendant in double jeopardy. *Valentine v. United States* (D.C. 1978, 394 A.2d 1374).

Cited in *Valentine v. United States* (D.C. 1978, 394 A.2d 1374).

CHAPTER 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24-203. Imposition of indeterminate sentences authorized — Life and death sentences.

NOTES TO DECISIONS

Effect of Federal Parole Act on 15-year minimum sentence. — Federal court suggested, though it was not required to decide, that the general eligibility section (18 U.S.C. § 4205 (a)) of the Federal Parole Act did not supersede the specific 15-year minimum sentence prescribed in subsection (a). *Fraday v. United States Bureau*

of Prisons (1978, 570 F.2d 1027, 187 U.S. App. D.C. 118).

Cited in *Oesby v. United States* (D.C. 1979, 398 A.2d 1); *United States v. Wilkerson* (1978, 598 F.2d 621, U.S. App. D.C.).

§ 24-206. Revocation of parole after retaking — Hearing — New parole.

NOTES TO DECISIONS

Circumstances when delay justifies release of prisoner. — Fifth Circuit required a showing of both unreasonable delay and prejudice before a person was

entitled to release because of a delay in obtaining a final parole revocation hearing. *Beck v. Wilkes* (1979, 589 F.2d 901).

CHAPTER 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital — Certification to the court — Acquittal by jury on grounds of insanity — Confinement in a mental institution — Conditions for release after confinement — Conditional release — Expenses — Writ of habeas corpus — Inconsistent provisions of Federal Statutes superseded — Return order for apprehension of escaped inmates — Procedure and time limitation for pleading insanity as a defense.

NOTES TO DECISIONS

This section is constitutional. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Application of section. — The District of Columbia insanity provisions codified in this section apply to both federal and local charges. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Purpose of 1970 amendment. — The 1970 amendment of this section attempted to accommodate the acquittee's constitutional rights and provide rehabilitative opportunities while protecting the public against anticipated danger. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Competency determinations are within the discretion of the trial judge and are entitled to great deference. *Bennett v. United States* (D.C. 1979, 400 A.2d 322).

Finding of competency will not be set aside upon review unless it is "clearly arbitrary or erroneous." *Bennett v. United States* (D.C. 1979, 400 A.2d 322).

Function of psychiatric expert under subsection (a). — An examination under subsection (a) provides the court with the judgment of a neutral and detached expert, and while his opinion may be utilized by the defendant, the expert is not always available to advise and assist in the development of an insanity defense. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Different from that of experts furnished under § 11-2605 (a). — Subsection (a) providing for a mental examination pursuant to court order must be distinguished from § 11-2605 (a), which authorizes the furnishing of psychiatric experts to indigent criminal defendants. *Gaither v. United States* (D.C. 1978, 391 A.2d 1364).

Adjudication of competence based upon certification of psychiatrist. — If neither party objects, the court, without holding a hearing, may enter an order adjudicating the defendant to be competent based upon the certification of the examining psychiatrist. *Bennett v. United States* (D.C. 1979, 400 A.2d 322).

Due process not violated by denial of examination at extradition hearing. — Defendant's Fifth Amendment due process rights were not violated by the denial of his request at his extradition hearing for an immediate psychiatric examination since it was not clear that the government's misstatement allegedly resulting in the denial was an intentional device to gain a tactical

advantage, and in any event the defendant was not substantially prejudiced because he received a psychiatric examination shortly after he was transferred to the Maryland authorities pursuant to the extradition order and the results were available to him in his District of Columbia trial. *Shreeves v. United States* (D.C. 1978, 395 A.2d 774).

Successful reliance on insanity defense authorizes commitment. — This section authorizes prompt commitment of persons who have successfully relied upon an insanity defense in criminal proceedings. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Acquitees must have chosen insanity defense. — This section does not include persons acquitted by reason of insanity where there is neither objective nor subjective evidence that they chose to rely upon an insanity defense or were aware that one had been interposed by counsel. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Burden of proving insanity. — This section provides that the burden of proving insanity lies on the defendant. *Smothers v. United States* (D.C. 1979, 403 A.2d 306).

Acquittee has no right to jury decision on commitment. — An insanity acquittee has no right to have a jury decide whether his condition meets the requirements for commitment under this section. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Character of subsection (d) release hearing. — Whereas the § 21-545(b) commitment hearing represents a de novo process, the release hearing provided for in subsection (d) of this section is arguably an updating process to determine how present mental status compares with earlier findings which had been urged by the defendant himself. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Burden of proving entitlement to release. — In the course of a release hearing under subsection (d) (2) of this section, the insanity acquittee bears the burden of proving by a preponderance of the evidence that he is entitled to release. *United States v. Henry* (1979, 600 F.2d 924, U.S. App. D.C.).

Acquittee entitled to periodic review of commitment. — As a matter of constitutional equal protection, acquitees committed under this section are entitled to periodic

review similar to that afforded to civilly committed persons under § 21-548. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

But not to release or civil proceedings upon expiration of hypothetical prison term. — Defendant lawfully committed upon finding of not guilty by reason of insanity was not constitutionally entitled to release or civil commitment proceedings under § 21-545 upon expiration of the maximum period for which he could have been imprisoned, since the length of a hypothetical prison term has no relationship to the rehabilitative goal and safety concerns of hospital confinement. *Jones v. United States* (D.C. 1978, 396 A.2d 183).

Directed verdict on insanity defense. — Assuming that the trial court may direct a verdict for a defendant on the insanity question, the evidence would have to be virtually conclusive since the defendant has the burden of proving insanity by a preponderance of the evidence under subsection (j). *Gilbert v. United States* (D.C. 1978, 395 A.2d 1).

Presumption of continued insanity not conclusive. — Where defendant committed crime while under continuing adjudication of insanity the jury could presume that he was still insane when he committed the offense, but that presumption was not conclusive; rather, the continuing adjudication of insanity was sufficient to prove insanity by a preponderance of the evidence within the meaning of subsection (j) unless the government’s evidence sufficed to raise enough doubt that the defendant failed to carry his burden. *Gilbert v. United States* (D.C. 1978, 395 A.2d 1).

Adoption of diminished capacity concepts province of legislature. — Scope and magnitude of concepts of diminished capacity or partial insanity are such that their adoption is solely within the province of the legislature and cannot be effected by expedient modification of the rules of evidence. *Jones v. United States* (D.C. 1978, 386 A.2d 308).

Cited in *In re C.W.M.* (D.C. 1979, 407 A.2d 617).

§ 24-302. Commitment of mentally ill person while serving sentence.

NOTES TO DECISIONS

Release at expiration of short-term sentence subject to certification under § 24-303. — A prisoner transferred from a penal facility to a mental hospital under this section is not entitled to mandatory release at the expiration of his short-term sentence unless he has been appropriately certified as being “restored to mental health” pursuant to § 24-303 because these sections sufficiently reflect the

spirit of the good time limitations embodied in 18 U.S.C. § 4241, so that the same restrictions established by the federal provision properly apply to transferees under the local statute. *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

§ 24-303. Restoration to sanity — Delivery of person to court — Delivery of person to Director of Department of Corrections.

NOTES TO DECISIONS

Release of transferred prisoner at expiration of short-term sentence subject to certification. — A prisoner transferred to a mental hospital under § 24-302 is not entitled to mandatory release at the expiration of his short-term sentence unless he has been appropriately certified as being “restored to mental health” pursuant to

this section because these sections sufficiently reflect the spirit of the good time limitations embodied in 18 U.S.C. § 4241, so that the same restrictions established by the federal provision properly apply to transferees under the local statute. *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

CHAPTER 4.—PRISONS AND PRISONERS
Subchapter I.—Prisons

§ 24-405. Deduction for good conduct — Discharge.

NOTES TO DECISIONS

Cited in *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

§ 24-425. Place of imprisonment — Designation by Attorney General — Transfer.

NOTES TO DECISIONS

Reasons for transfer are immaterial so long as the transfer is to an institution permitted by 18 U.S.C. § 4082(b) or the District of Columbia Code and the occasion of transfer does not give rise to any procedural due process rights. *Beck v. Wilkes* (1979, 589 F.2d 901).

No constitutionally protected interest was infringed when prisoner was transferred from one institution to another since he had no justifiable expectation, rooted in law, that he would be transferred only for misbehavior or upon occurrence of some other specified event. *Smith v. Carlson* (1978, 447 F. Supp. 422).

Parole review. — District of Columbia Code offenders properly incarcerated in federal penitentiaries under this section are subject to parole review before the United States Parole Commission rather than the District of Columbia Parole Board. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258); *Dobbs v. Neverson* (D.C. 1978, 393 A.2d 147).

Subchapter II.—Department of Corrections

§ 24-442. Powers of Department over institutions — Rules and regulations.

NOTES TO DECISIONS

Standard for measuring constitutionality of conditions of pretrial confinement. — Absent a violation of specific constitutional guarantees, the constitutionality of the conditions of pretrial confinement can be measured only by balancing the liberty interests of the pretrial detainee against the need of the state to protect the safety of the community. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Pretrial detainees generally retain more rights than convicted prisoners. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Each restriction of jail regimen upon pretrial detainees must be examined carefully to determine if it is justified by substantial necessities of jail administration. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Certain conditions subjected to closest scrutiny. — Conditions of confinement that are likely to impair a

pretrial detainee's mental or physical health or that impede the preparation of his defense or induce him to plead guilty should be subjected to the closest scrutiny and can be justified only by the most compelling necessity. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Court order protecting specific entitlements. — Appellate court approved orders of federal district court ensuring that pretrial detainees at the District of Columbia jail would be provided a minimum space of their own, a regular change of linen and outer clothing, daily recreation, prompt psychiatric care, carefully regulated use of restraints and a rational security classification to prevent excessively harsh confinement and possibly to prepare the way for contact visits. *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

Cited in *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Subchapter IV.—Work Release Program

§ 24-462. Recommendations — Requests for privilege — Necessity for order of sentencing court.

NOTES TO DECISIONS

Cited in *Campbell v. McGruder* (1978, 580 F.2d 521, 188 U.S. App. D.C. 258).

CHAPTER 7.—INTERSTATE AGREEMENT ON DETAINERS

§ 24-701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.

NOTES TO DECISIONS

- I. General Consideration.
 II. What Constitutes Detainer.

I. GENERAL CONSIDERATION.

Primary purpose of Interstate Agreement on Detainers is to encourage the expeditious disposition of charges pending against a prisoner in another jurisdiction and consequently to minimize the adverse impact of foreign prosecutions on rehabilitative programs undertaken during incarceration in the original jurisdiction. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Rights under Agreement can be waived. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And constitutional standard inapplicable. — The traditional standard for waiver of constitutional rights (a knowing and intelligent waiver) does not apply to waiver of a defendant's statutory right under the Agreement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Claim that Agreement has been violated should be raised at earliest possible time before the witnesses and the parties have gone to the burden and expense of a trial. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

District not separate sovereign. — The District of Columbia does not acquire the attributes of separate sovereignty by virtue of its being a party to the Interstate Agreement on Detainers. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Nor actual state. — Although Article II of the Agreement includes the District of Columbia within the definition of "state," that is merely a definitional device in which the legislature indulged as a matter of convenience and by no means transforms the District of Columbia into an actual state. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Notice to prisoner sufficient though not in compliance with Article III (c). — Written notice of a detainer, even though it did not strictly comply with the notification provision of Article III (c), was sufficient and was received promptly enough to impose the burden of substantial compliance with the Agreement on the prisoner, who was obliged to direct a written request for a speedy trial to the District in order to trigger the 180-day period. *McBride v. United States* (D.C. 1978, 393 A.2d 123).

Purpose of Article IV (e). — Article IV (e) was designed to promote the speedy disposition of outstanding charges and to avoid shuttling back and forth between jurisdictions and disrupting consistent treatment programs. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Prisoner's right under Article IV (e) neither fundamental nor constitutional. — The right of a prisoner under Article IV (e) not to be transferred back to his original place of imprisonment before he is tried is neither fundamental nor constitutional. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

And normally waived if not asserted at trial. — Absent a miscarriage of justice, an error seriously affecting the status of the judicial system, or good cause shown, the failure to present a claim under Article IV (e) at the trial level constitutes a waiver of those rights under Super. Ct. Cr. R. 12 (d). *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Mandatory action under Article V (a). — Article V (a) of the Agreement sets forth the mandatory action to be taken by the sending state once a proper request for transfer has been made. *Vance v. United States* (D.C. 1979, 399 A.2d 52).

II. WHAT CONSTITUTES DETAINER.

Meaning of detainer. — A detainer is not a demand for the immediate surrender of a prisoner but only a request from the official lodging the detainee that he be notified before the inmate is released from custody. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

A detainer under the Agreement generally refers to a document filed on an untried indictment, information, or complaint. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Prisoner must be entered upon term of imprisonment. — A prisoner temporarily incarcerated pending disposition of charges is not entitled to invoke the protections of the Agreement. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Where at the time of their transfers to the District of Columbia prisoners were confined in local Philadelphia facilities pending disposition of outstanding charges, they had not entered upon a "term of imprisonment" within the meaning of the Agreement, and so its provisions did not apply to them. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

"Come-up" order not a detainer. — A "come-up" order, which is an administrative notice from a Superior Court clerk's office to the United States Marshall's Service to produce a prisoner, is not a detainer within the meaning of the Agreement. *United States v. Palmer* (D.C. 1978, 393 A.2d 143).

Whereas the granting of a "come-up" order is routine and rarely the product of an independent judicial determination, a detainer, the filing of which does not in and of itself effect the transfer of a prisoner from one authority to another, requires an additional judicial or executive decision similar to that made in a removal or extradition proceeding. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

A "come-up" order involves only the intra-jurisdictional transfer of prisoners and thus differs from a detainer, which is a notice to authorities in a foreign jurisdiction that a named individual is wanted on a felony or arrest warrant for criminal proceedings in the issuing jurisdiction. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Effects of "come-up" order similar to writ of habeas corpus ad prosequendum. — Because a "come-up" order works the same limited intrusion into the institutional life of its subject as a federal writ of habeas corpus ad prosequendum, it is not to be regarded as a detainer. *Gale v. United States* (D.C. 1978, 391 A.2d 230).

Federal writ of habeas corpus ad prosequendum not a detainer. — A writ of habeas corpus ad prosequendum issued by a federal court to state authorities and directing the production of a state prisoner for trial on criminal charges is not a detainer within the meaning of the

Agreement. *Sheffield v. United States* (D.C. 1979, 397 A.2d 963); *United States v. Palmer* (D.C. 1978, 393 A.2d 143).

The Interstate Agreement on Detainers does not apply to writs of habeas corpus ad prosequendum because such writs do not cause the problems created by detainers which the IAD was meant to relieve. *United States v. Cogdell* (1978, 585 F.2d 1130, 190 U.S. App. D.C. 185, cert. denied, 440 U.S. 957, 99 S. Ct. 1509, 59 L. Ed. 2d 777 (1979)).

The Interstate Agreement on Detainers Act does not apply where appellant was transferred pursuant to a writ of habeas corpus ad prosequendum and no detainer was ever filed. *Vance v. United States* (D.C. 1979, 399 A.2d 52).

Existence of District of Columbia armed robbery sentence is not equivalent to a detainer lodged by another sovereign under the Interstate Agreement on Detainers. *Goode v. Markley* (1979, 603 F.2d 973, U.S. App. D.C.).

Cited in *Smallwood v. United States* (D.C. 1979, 407 A.2d 675); *Capers v. United States* (D.C. 1979, 403 A.2d 1155); *United States v. Bailey* (1978, 585 F.2d 1087, 190 U.S. App. 142).

Part V

General Statutes

| | |
|--|--|
| TITLE 25—ALCOHOLIC BEVERAGES. | |
| TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS. | |
| TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS. | |
| TITLE 29—CORPORATIONS. | |
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| TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS. | |
| TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS. | |
| TITLE 33—FOOD AND DRUGS. | |
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| TITLE 36—LABOR. | |
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| TITLE 44—RAILROADS AND OTHER CARRIERS. | |
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| TITLE 47—TAXATION AND FISCAL AFFAIRS. | |
| TITLE 49—COMPILATION AND CONSTRUCTION OF CODE. | |

TITLE 25.—ALCOHOLIC BEVERAGES

| Chap. | | Sec. |
|-------|--------------------------------------|--------|
| 1. | Alcoholic Beverage Control | 25-101 |

CHAPTER 1.—ALCOHOLIC BEVERAGE CONTROL

| Sec. | | Sec. |
|----------|------------------------------------|---|
| 25-103. | Definitions. | 25-111. License classifications—Fees. |
| 25-104. | Alcoholic Beverage Control Board — | 25-124. Beverage taxes — Method of collection — Class |
| | Appointment — Term — Employees. | C or D licensees — Reports. |
| 25-104a. | [Repealed.] | |

§ 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

* * * * *

(r) the words “legitimate theater” mean premises in which the principal business shall be the operation of live theatrical, operatic or dance performances, or such other lawful adult entertainment or recreational facilities as the Alcoholic Beverage Control Board, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this chapter, shall by regulation classify for eligibility. The words shall not include a motion picture theater.

(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-73, amended section by adding subsection (r).

Legislative History of Law 2-73. Law 2-73 was introduced in Council and assigned Bill No. 2-206, which was referred to the Committee on Finance and Revenue.

The Bill was adopted on first, amended first, and second readings on November 22, 1977, December 6, 1977 and January 10, 1978, respectively. Signed by the Mayor on February 9, 1978, it was assigned Act No. 2-149 and transmitted to both Houses of Congress for its review.

NOTES TO DECISIONS

Cited in *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707).

§ 25-104. Alcoholic Beverage Control Board — Appointment — Term — Employees.

The Commissioner of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioner, to be called the “Alcoholic Beverage Control Board,” each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board, one shall be appointed for two years, one for three years and one for four years, and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioner only for the unexpired terms. Members shall be eligible for reappointment. The Commissioner shall designate one of the members of the Board to be chairman thereof. The Commissioner is authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The Commissioner shall include in his annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4; Apr. 20, 1948, 62 Stat. 176, ch. 217, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205 (h), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former next-to-last sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 25-104a. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3205 (i), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 25-106. Jurisdiction of Board over licenses — Appeal from revocation — Duties.**NOTES TO DECISIONS**

Arbitrary and capricious denial of license could justify intrusion by judiciary. — Although the Beverage Control Board is the expert body given the right, power and jurisdiction over issuance, transfer, revocation and suspension of liquor licenses, there could come a point when the Board’s denial of a license would evidence such

arbitrary and capricious conduct that a court order mandating issuance of a license would become necessary and appropriate. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

§ 25-111. License classifications — Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

* * * * *

(g) *Retailer's license, class C.* — Such a license shall be issued only for a bona fide restaurant, hotel, legitimate theater, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of hotels, alcoholic beverages may also be sold and served in the private room of a registered guest. In the case of clubs, alcoholic beverages may be sold and served in any room or area available only to bona fide members of such club or their bona fide guests, or both. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum; for a hotel, under one hundred rooms, \$825 per annum; for a hotel of one hundred or more rooms, \$1,650 per annum; for a legitimate theater, \$425 per annum; for a club, \$425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$3 per month or \$20 per annum: Provided, that such a license may be issued to any company engaged in interstate commerce covering all dining, club and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$100; for all other passenger-carrying marine vessels serving meals, \$75 per month or \$825 per annum.

(h) *Retailer's license, class D.* — Such a license shall be issued only for bona fide restaurant, tavern, hotel, legitimate theater, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$330 except that in the case of a marine vessel the fee shall be \$30 per month or \$330 per annum, and in the case of each railroad dining car or club car \$1.50 per month or \$15 per annum: Provided, that such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$50.

* * * * *

(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment.

1978 — Act April 18, 1978, D.C. Law 2-73, amended section by inserting the words "legitimate theater," in the first sentence of subsection (g), by inserting the phrase "for a legitimate theater, \$425 per annum;" in the first

sentence of the second paragraph of subsection (g) and by inserting the words "legitimate theater," in the first sentence of the first paragraph of subsection (h).

Legislative History of Law 2-73. See note to § 25-103.

NOTES TO DECISIONS

Cited in *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707).

§ 25-113. Holding of license of more than one class forbidden — Definition of “licensee.”

NOTES TO DECISIONS

Cited in *Spevak v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 549).

§ 25-115. Applications for licenses — Qualification of applicants — Moral character — Citizenship — Prior convictions — Ownership — Interest of manufacturer in retail business — Character of premises — Advertising application — Hearing of protests — Objection of property owners — Removal of bonded liquor from Government warehouses — Penalty.

NOTES TO DECISIONS

Appropriateness of location. — This section requires that the Board issue a license only if it has found that the proposed location is an appropriate one for a license. *Spevak v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 549).

Applicant had notice of criterion applied to determine appropriateness. — Where applicant for a license for a proposed combination gasoline station-liquor store knew that the creation of a “drink-and-drive” atmosphere would be one of the Board’s concerns and where testimony opposing the license on this ground was offered and received at the hearing, the applicant could not argue that it was without notice that a “drink-and-drive” criterion would be applied pursuant to the Board’s authority under this section to determine appropriateness based on the character of the premises. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

But Board’s conclusion of inappropriateness not supported by proper evidence. — The Board’s conclusion that the close business relationship and physical proximity of a gas station and an adjacent liquor store and the existing customer identification of the gas station business with the structure housing the liquor business would create a “drink-and-drive” atmosphere rendering the character of the premises inappropriate for a retail liquor store was not supported by substantial, rationally connected evidence. *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

Cited in *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707); *DuPont Circle Citizens Ass’n v. District of Columbia Bd. of Zoning Adjustment* (D.C. 1979, 403 A.2d 314).

§ 25-121. Sale to minors or intoxicated persons — Liability of licensee.

NOTES TO DECISIONS

Intoxication and intoxicated appearance prerequisites to liability. — Liability could be imposed for serving alcoholic beverages to intoxicated person only if there was a showing not only that at the time the defendants provided the alcoholic beverages the person was intoxicated but also that at that time she appeared to be intoxicated to those serving the drinks. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

Section not applicable to social hosts. — While this section imposes an obligation upon commercial vendors of liquor to refrain from providing alcoholic drinks in circumstances indicating that a person is intoxicated and

reasonably likely to cause harm to others, it has never been held to impose that duty upon social hosts. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

General rule regarding liability of social hosts. — There is now no jurisdiction in the United States where, absent an explicit civil damage or “dram shop” law (and D.C. has no such act), a social host is held liable for having served liquor to an intoxicated adult who as a result causes harm to a third person. *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

Cited in *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707).

§ 25-124. Beverage taxes — Method of collection — Class C or D licensees — Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer’s license and on all of the said beverages imported or brought into the District by a holder of a wholesaler’s license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer’s license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of \$1.50 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of \$1.50 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

* * * * *

(As amended Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066.)

Effect of Amendment.
1978 — Act Apr. 18, 1978, D.C. Law 2-73, amended section by striking “\$2.00” and replacing it with “\$1.50” wherever it appeared.

Legislative History of Law 2-73. See note to § 25-103.

§ 25-138. Tax on beer.

NOTES TO DECISIONS

Cited in *Jameson’s Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1978, 384 A.2d 412).

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Cross reference. For personal money order businesses, see § 47-3201 et seq.

| Chap. | Sec. |
|--|--------|
| 2. Joint Accounts — Adverse Claimants — Trust Accounts | 26-201 |

CHAPTER 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

§ 26-203. Notice of adverse claim to deposit.

NOTES TO DECISIONS

Section by its terms applies only to banks and trust companies, not to savings and loan associations. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).
But savings and loan associations deserve same protection. — Like a bank or any other similar financial institution, a savings and loan association can find itself in the position of a stakeholder between adverse claimants, and it ought to enjoy the same protection from liability when seeking judicial resolution of that dispute. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).

Financial institutions may freeze deposits subject to adverse claims. — When a savings and loan association, credit union or similar banking institution receives notice of an adverse claim to a deposit, said institution may freeze that deposit for a brief, reasonable period of time so as to permit the filing of litigation, either by interpleader or other appropriate civil litigation, to resolve the adverse claims. *Stevenson v. First Nat'l Bank* (D.C. 1978, 395 A.2d 21).

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Cross reference. For personal money orders, see § 47-3201 et seq.

| Subtitle | Sec. |
|---|----------|
| I. Uniform Commercial Code | 28:1-101 |
| II. Other Commercial Transactions | 28-2101 |

SUBTITLE I.—UNIFORM COMMERCIAL CODE

Article 1.—General Provisions

Part 1.—Short Title, Construction, Application and Subject Matter

§ 28:1-103. Supplementary general principles of law applicable. (As amended Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment. Section 2 of Act Mar. 16, 1978, D.C. Law 2-61, 24 DCR 6011, purported to amend section but did not. Amendment enumerated actually amended sections 12-302 and 29-921. Legislative History of Law 2-61. See note to § 12-302.

§ 28:1-105. Territorial application of this subtitle; parties' power to choose applicable law.

NOTES TO DECISIONS

Subsection (1) inapplicable to security interest. — When a security interest is involved, § 28:9-103(5) controls rather than subsection (1) of this section. Heller v. Buchbinder (D.C. 1979, 399 A.2d 850). Cited in Lee v. Flintkote Co. (1979, 593 F.2d 1275, U.S. App. D.C.).

§ 28:1-107. Waiver or renunciation of claim or right after breach.

NOTES TO DECISIONS

Requirements for waiving right to notice. — The debtor cannot waive his right to notice unless the waiver or renunciation is in writing, or, if done orally, is based on consideration, is not barred by the Statute of Frauds, and is consistent with § 28:2-209. Gavin v. Washington Post Employees Fed. Credit Union (D.C. 1979, 397 A.2d 968).

Part 2.—General Definitions and Principles of Interpretation

§ 28:1-201. General definitions.

NOTES TO DECISIONS

How notice accomplished. — Under this section, a person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other, in ordinary course, whether or not such other actually comes to know of it. Heller v. Buchbinder (D.C. 1979, 399 A.2d 850).

§ 28:1-203. Obligation of good faith.

NOTES TO DECISIONS

Cited in *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

§ 28:1-205. Course of dealing and usage of trade.

NOTES TO DECISIONS

Standard Government contract clause qualified as usage of trade. — Existence and potential invocation of the standard “changes” clause in Government construction contracts qualified as a usage of trade. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Party charged with knowledge of standard provisions in Government contract. — Where supplier had in fact

been party to an earlier contract to supply limestone for another Government project and thus had ample opportunity to gain exposure to the Government’s standard “changes” and “termination” provisions at least once prior to the transaction at issue, the court charged the supplier with knowledge of those provisions. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Article 2.—Sales

Part 1.—Short Title, General Construction and Subject Matter

§ 28:2-102. Scope; certain security and other transactions excluded from this article.

NOTES TO DECISIONS

Cited in *Lee v. Flintkote Co.* (1979, 593 F.2d 1275, U.S. App. D.C.).

§ 28:2-104. Definitions: “merchant”; “between merchants”; “financing agency”.

NOTES TO DECISIONS

Consequences of distinction between merchants and ordinary buyers and sellers. — The analytical distinction between merchants and ordinary buyers and sellers legitimated the court’s inquiry into the parties’ levels of knowledge of a particular business environment relative to their contract. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Where supplier had in fact been party to an earlier contract to supply limestone for another Government

project and thus had ample opportunity to gain exposure to the Government’s standard “changes” and “termination” provisions at least once prior to the transaction at issue, the court charged the supplier with knowledge of those provisions. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Part 2.—General Definitions and Principles of Interpretation

§ 28:2-201. General definitions.

NOTES TO DECISIONS

This section requires a quantity term in order for an agreement to be an enforceable contract. *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Contract modification. — Section 28:2-209 requires that an agreement modifying a contract must conform to this section. *Government of Republic of China v. Compass Communications Corp.* (1979, 473 F. Supp. 1306).

§ 28:2-202. Final written expression: parol or extrinsic evidence.

NOTES TO DECISIONS

Cited in *Lee v. Flintkote Co.* (1979, 593 F.2d 1275, U.S. App. D.C.).

§ 28:2-209. Modification, rescission and waiver.

NOTES TO DECISIONS

Contract modification. — This section requires that an agreement modifying a contract must conform to § 28:2-201. *Government of Republic of China v. Compass Communications Corp.* (1979, 473 F. Supp. 1306).

Requirements for waiving right to notice. — The debtor cannot waive his right to notice unless the waiver

or renunciation is in writing, or, if done orally, is based on consideration, is not barred by the Statute of Frauds, and is consistent with the provisions of this section. *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

Part 3.—General Obligation and Construction of Contract

§ 28:2-305. Open price term.

NOTES TO DECISIONS

Subsection (1) (c) applied where the price standard for aviation fuel was to be the posted prices for a particular grade of crude oil and, with the advent of government price controls, the subsequent existence of two classes of posted prices rendered the contract standard incapable of fixing a sale price. *North Cent. Airlines, Inc. v. Continental Oil Co.* (1978, 574 F.2d 582, 187 U.S. App. D.C. 371).

Factor for consideration in determining reasonable price. — In determining a reasonable price for aviation

fuel under this section, the district court was directed to consider the parties' intent to pass through some of the costs of the crude oil by increasing the price of the fuel in a definite relationship to any increase in the posted price of the crude oil. *North Cent. Airlines, Inc. v. Continental Oil Co.* (1978, 574 F.2d 582, 187 U.S. App. D.C. 371).

§ 28:2-306. Output, requirements and exclusive dealings.

NOTES TO DECISIONS

Subsection (1) does not preclude good faith reductions that are highly disproportionate to normal prior requirements or stated estimates. *R.A. Weaver & Assocs.*

v. Asphalt Constr., Inc. (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

§ 28:2-314. Implied warranty: merchantability; usage of trade.

NOTES TO DECISIONS

Blood transfusions are services for which breach of warranty will not lie. *Fisher v. Sibley Mem. Hosp.* (D.C. 1979, 403 A.2d 1130).

Cited in *R.A. Weaver & Assocs. v. Asphalt Constr., Inc.* (1978, 587 F.2d 1315, 190 U.S. App. D.C. 418).

Part 4.—Title, Creditors and Good Faith Purchasers

§ 28:2-401. Passing of title; reservation for security; limited application of this section.

NOTES TO DECISIONS

Cited in *Locks v. United States* (D.C. 1978, 388 A.2d 873).

§ 28:2-403. Power to transfer; good faith purchase of goods; “entrusting”.

NOTES TO DECISIONS

Cited in *Locks v. United States* (D.C. 1978, 388 A.2d 873).

Part 6.—Breach, Repudiation and Excuse

§ 28:2-610. Anticipatory repudiation.

NOTES TO DECISIONS

Recovery after repudiation. — A party to a contract has the right to recover for breach where the repudiating party has communicated, by word or conduct, unequivocally and positively, its intention not to perform. *Government of Republic of China v. Compass Communications Corp.* (1979, 473 F. Supp. 1306).

Article 3.—Commercial Paper

Part 1.—Short Title, Form and Interpretation

§ 28:3-104. Form of negotiable instruments; “draft”; “check”; “certificate of deposit”; “note”.

NOTES TO DECISIONS

Cited in *Clemons v. United States* (D.C. 1979, 400 A.2d 1048).

Part 3.—Rights of a Holder

§ 28:3-307. Burden of establishing signatures, defenses and due course.

NOTES TO DECISIONS

Cited in *Yasuna v. Miller* (D.C. 1979, 399 A.2d 68).

Part 4.—Liability of Parties

§ 28:3-401. Signature.

NOTES TO DECISIONS

Cited in *Yasuna v. Miller* (D.C. 1979, 399 A.2d 68).

Part 6.—Discharge

§ 28:3-606. Impairment of recourse or of collateral.

NOTES TO DECISIONS

Prior law unchanged. — This section does not represent any change from the law applicable prior to the adoption of the Uniform Commercial Code in the District of Columbia. *Yasuna v. Miller* (D.C. 1979, 399 A.2d 68).

Common law altered. — This section appears to have altered the common-law rule that the terms of a note

cannot be altered by an agreement with a third person not a party to the instrument. *Yasuna v. Miller* (D.C. 1979, 399 A.2d 68).

Article 9.—Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

Part 1.—Short Title, Applicability and Definitions

§ 28:9-101. Short title.

NOTES TO DECISIONS

Creditor's obligation to give debtor notice of repossession and resale of collateral is governed by the

Uniform Commercial Code. *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

§ 28:9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

NOTES TO DECISIONS

Notice policies satisfied by notification of account debtor. — So long as notice is given to the account debtor of the assignee's security interest, the notice policies which underlie subsections (1) and (5) of this section will still be satisfied when the assignment is neither executed in the District of Columbia nor made to an assignee in the District of Columbia. *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Place chosen for filing. — Since the purpose of filing is to allow subsequent creditors of the debtor-assignor to determine the true status of its affairs, the place chosen for filing must be one which such creditors would normally associate with the assignor. *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Adequate notice provided by filing under subsection (1). — When subsection (1) of this section is relevant because the debtor-assignor has offices in various states in

which the account records are kept, filing by the assignee in the jurisdiction where those offices are located would adequately notify subsequent creditors of the true status of the debtor-assignor's affairs. *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Purpose of subsection (5). — Subsection (5) of this section was enacted to provide an alternative means for perfecting a security interest where a transaction between two countries raises a problem as to the required place of filing financial statements. *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Subsection (5) controls security interest. — When a security interest is involved, subsection (5) of this section controls rather than § 28:1-105 (1). *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 28:9-104. Transactions excluded from article.

NOTES TO DECISIONS

Cited in *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

§ 28:9-106. Definitions: “account”; “contract right”; “general tangibles”.

NOTES TO DECISIONS

Cited in *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

§ 28:9-109. Classification of goods; “consumer goods”; “equipment”; “farm products”; “inventory”.

NOTES TO DECISIONS

Cited in *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

Part 2.—Validity of Security Agreement and Rights of Parties Thereto**§ 28:9-203. Enforceability of security interest; proceeds, formal requisites.**

NOTES TO DECISIONS

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

Part 3.—Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority**§ 28:9-301. Persons who take priority over unperfected security interests; “lien creditor”.**

NOTES TO DECISIONS

Cited in *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850);
In re Estate of Jacobson (D.C. 1978, 387 A.2d 590).

§ 28:9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

NOTES TO DECISIONS

Cited in *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

§ 28:9-317. Secured party not obligated on contract of debtor.

NOTES TO DECISIONS

Mere existence of security interest does not impose contract or tort liability upon a secured party for the debtor's acts or omissions. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

Part 4.—Filing

§ 28:9-402. Formal requisites of financing statement; amendments.

NOTES TO DECISIONS

Cited in *Heller v. Buchbinder* (D.C. 1979, 399 A.2d 850).

Part 5.—Default

§ 28:9-501. Default; procedure when security agreement covers both real and personal property.

NOTES TO DECISIONS

Cited in *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

§ 28:9-503. Secured party's right to take possession after default.

NOTES TO DECISIONS

Chattel mortgagee's right to take possession of impounded vehicle flows not from the impoundment provisions, but from the Uniform Commercial Code provisions governing secured transactions. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition.

NOTES TO DECISIONS

Creditor is not entitled to a deficiency judgment; his recovery is limited to the proceeds of the private sale if he has failed to give the required notice of the private sale. *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

Debtor's voluntary delivery of collateral not equivalent of notice. — When a creditor contemplates a private sale and is accordingly required only to notify the debtor of "the time after which any private sale . . . is to be made," a debtor's voluntary delivery of the collateral for the purpose of having it sold by the creditor is not the equivalent of notice to the debtor of the time "after which" a private sale will take place. *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

And strict compliance with notice requirements not preempted. — A debtor's voluntary delivery of the collateral should not preempt his right to strict compliance with the notice requirements. *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

Creditor's failure to give required notice of private sale is not cured by the trial court's determination of the reasonable value of the goods at the time of the sale. *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536); *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

§ 28:9-506. Debtor's right to redeem collateral.**NOTES TO DECISIONS**

Debtor who voluntarily surrenders collateral has statutory right to notice. *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

Burden is on creditor to prove that the fair and reasonable value of the security is being credited to the

debtor's account. *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397 A.2d 968).

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

§ 28:9-507. Secured party's liability for failure to comply with this part.**NOTES TO DECISIONS**

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340); *Gavin v. Washington Post Employees Fed.*

Credit Union (D.C. 1979, 397 A.2d 968); *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS**CHAPTER 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME****§ 28-2701. Holidays designated — Time for performing acts extended.**

Section referred to in section. 1-362.4.

CHAPTER 31.—FRAUDULENT CONVEYANCES**§ 28-3103. Fiduciary's suit to vacate fraudulent transaction.****NOTES TO DECISIONS**

Cited in *Neves v. Riley* (1978, 447 F. Supp. 306).

CHAPTER 33.—INTEREST AND USURY

Sec.

28-3301. Rate of interest expressed in contract.

28-3308. Finance charge on direct installment loans.

§ 28-3301. Rate of interest expressed in contract.

(a) Except as otherwise provided in section 28-3308, and chapter 36 of this subtitle, the parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at a rate not exceeding 15 percent per annum.

(b) Any loan which is secured by a mortgage or deed of trust on residential real property shall be subject to the following requirements:

(1) the rate of interest thereon, pursuant to an agreement in writing between the borrower and lender, does not exceed simple interest on the unpaid principal balance of the loan at the rate of 15 percent per annum;

(2) the loan is both contracted for and consummated after October 5, 1979, and no written commitment to make the loan at a lower rate of interest than the maximum rate permitted hereunder was issued by the lender to the borrower prior to the effective date of this section;

(3) the loan may be prepaid by the borrower at no penalty at any time following the expiration of three years from the execution of the mortgage or deed of trust; and

(4) any borrower who has made a down payment equaling 20 percent or more of the total purchase price of the property is not required by the lender to make advance payments of real estate taxes or casualty insurance premiums to enable the lender to have funds on hand for disbursement for payment of such taxes or insurance premiums and such borrower is informed in writing of his right to pay such taxes and insurance premiums directly.

(c) Any loan which is secured directly or indirectly by a mortgage or deed of trust other than a first mortgage or first deed of trust on residential real property in addition to meeting the conditions of subsection (b) shall also be subject to the following conditions:

(1) the loan shall contain a schedule of payments under which each payment shall be equal to, or substantially equal to, the other payments and the intervals between payments shall be substantially equal; and

(2) the promissory note evidencing the debt shall be, and shall state on its face that it is, not negotiable.

(d) Notwithstanding any other provision of this chapter any loan having an original principal amount in excess of \$5,000.00 shall not be subject to the provisions of this chapter, and it shall be lawful to contract for, or receive, any rate of interest thereon, if any of the following conditions are satisfied:

(1) the borrower is a not for profit corporation, whether organized under the laws of the United States, the District of Columbia or any other jurisdiction; or

(2) the borrower is an individual, group of individuals, corporation, unincorporated association, partnership, or other entity, and the loan is made for the purpose of acquiring or carrying on a business, professional, or commercial activity; or

(3) the borrower is an individual, group of individuals, corporation, unincorporated association, partnership, or any other entity, and the loan is made for the purpose of acquiring any real or personal property as an investment or for carrying on an investment activity; or

(4) the borrower is a religious society, as referred to in sections 29-501 through 29-512, and sections 29-513 through 29-516, and the loan is made for the purpose of acquiring or making an improvement on any real or personal property for purposes other than commercial or investment activities.

(e) (1) "Point" means a fee, premium, bonus, loan origination fee, service charge or any other charge equal to 1 percent of the principal amount of a loan which is charged by the lender at or before the time the loan is made as additional compensation for the loan.

(2) Except for loans insured or guaranteed in full or in part by the Federal Housing Administration, Veterans' Administration or any other federal agency and loans described in subsection (d), a lender may not charge a borrower more than 1 point.

(Aug. 30, 1964, 78 Stat. 675, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; Dec. 17, 1971, Pub. L. 92-200, § 1, 85 Stat. 665; Nov. 20, 1979, D.C. Law 3-38, § 2, 26 DCR 2183.)

Effect of Amendment.

1979 — Act Nov. 20, 1979, D.C. Law 3-38, amended section by designating the formerly undesignated provisions of this section as subsection (a) and substituting "15" for "8" in that subsection, and by adding subsections (b) through (e).

Legislative History of Law 3-38. Law 3-38 was introduced in Council and assigned Bill No. 3-172, which was referred to the Committee of the whole. The Bill was

adopted on first and second readings on October 23, 1979 and November 11, 1979, respectively. Signed by the Mayor on November 11, 1979, it was assigned Act No. 3-119 and transmitted to both Houses of Congress for its review.

Effective date. Act Nov. 20, 1979, Pub. L. 96-124, 93 Stat. 927, provided that the Interest Rate Modification Act of 1979 shall become law on the date of the enactment of Pub. L. 96-124.

NOTES TO DECISIONS

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

§ 28-3302. Rate of interest not expressed and on judgments.

NOTES TO DECISIONS

Contractual rate of interest controls. — Under § 15-108 the rate of interest agreed upon and fixed by the parties in the contract controls, rather than the statutory

rate of interest specified in this section. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

§ 28-3307. District of Columbia Council authorized to exempt certain mortgages and loans.

New implementing regulations. Pursuant to this section the following new regulations were adopted in 1979: the “Interest Rate Extension and Modification Act of 1978” (D.C. Law 2-140, Mar. 3, 1979, 25 DCR 5473).

These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 28-3308. Finance charge on direct installment loans.

(a) On a loan in which the principal does not exceed \$25,000 (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by chapter 36 of this subtitle) to be repaid in equal or substantially equal monthly, or other periodic, installments, any federally insured bank or savings and loan association doing business in the District of Columbia may contract for and receive interest at the rate permitted under this chapter or, in lieu of such interest, a finance charge, which, if expressed as an annual percentage rate, does not exceed a rate of 15 percent per annum on the unpaid balances of principal. This section does not limit or restrict the manner of contracting for the finance charge, whether by way of discount, add-on or simple interest, so long as the annual percentage rate of the finance charge does not exceed that permitted by this section.

* * * * *

(As amended Nov. 20, 1979, D.C. Law 3-38, § 3, 26 DCR 2183.)

Effect of Amendment.
1979 — Act Nov. 20, 1979, D.C. Law 3-38, amended section by substituting “15” for “11½” in the first sentence of subsection (a).
Legislative History of Law 3-38. See note to § 28-3301.

Effective date. Act Nov. 20, 1979, Pub. L. 96-124, 93 Stat. 927, provided that the Interest Rate Modification Act of 1979 shall become law on the date of the enactment of Pub. L. 96-124.

NOTES TO DECISIONS

Rebate requirement precluded characterizing full payment upon acceleration as “charge”. — The rebate requirement of subsection (b) precluded characterizing a payment in full required upon acceleration of a debt as a “charge” within the meaning of 15 U.S.C. § 1638 (a) (9) and

Regulation Z, § 226.8 (b) (4), relating to consumer installment contract disclosure statements. *Price v. Franklin Inv. Co.* (1978, 574 F.2d 594, 187 U.S. App. D.C. 383).

CHAPTER 35.—STATUTE OF FRAUDS

§ 28-3501. Estate created otherwise than by deed.

NOTES TO DECISIONS

Lease whose term is greater than a year must be in writing to satisfy this chapter. *Union Travel Assocs. v. International Assocs.* (D.C. 1979, 401 A.2d 105).

§ 28-3503. Declaration, grant, and assignment of trust.

NOTES TO DECISIONS

There may be resulting trust of partial interest in property. *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

Resulting trust proper unless court could determine intended interests of parties furnishing consideration. — Although the trial court’s ruling that the defendant did not intend to give the plaintiff a beneficial interest in the entire property was not erroneous, the case was remanded for determination of the proportions of the parties’ respective interests in the property based upon their intent

or, if their intent could not be found, for recognition of a resulting trust in plaintiff’s favor in the same proportion as the amount of consideration furnished by him. *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

Evidence of parties’ conduct after creation of resulting trust is admissible for whatever light it might shed on their intent at the time of the disputed transaction. *Haliday v. Haliday* (1926, 11 F.2d 565, 56 U.S. App. D.C. 179); *Edwards v. Woods* (D.C. 1978, 385 A.2d 780).

§ 28-3504. New promise or acknowledgement¹ of contract — Action against joint contractors.

NOTES TO DECISIONS

Cited in *Western Union Tel. Co. v. Massman Constr. Co.* (D.C. 1979, 402 A.2d 1275).

CHAPTER 37.—REVOLVING CREDIT ACCOUNTS

§ 28-3701. Definitions.

NOTES TO DECISIONS

Cited in *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

§ 28-3702. Amount and computation of credit service charge.

NOTES TO DECISIONS

Commercial entity included. — There is no indication that the revolving credit provisions of this chapter were designed to reach consumption by a natural person while

excluding purchases by a commercial entity. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

CHAPTER 38.—CONSUMER PROTECTIONS

Sec.
28-3818. Lay away plans.

§ 28-3801. Scope — Limitation on agreements and practices.

NOTES TO DECISIONS

Purpose of the revolving credit provisions of the Consumer Credit Protection Act was to establish maximum credit service charge rates for revolving credit accounts including credit cards growing out of retail sales

in the District of Columbia. *Giant Food, Inc. v. Jack I. Bender & Sons* (D.C. 1979, 399 A.2d 1293).

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

§ 28-3812. Limitation on creditors' remedies.**NOTES TO DECISIONS**

Cited in *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

§ 28-3813. Consumers' remedies.**NOTES TO DECISIONS**

Cited in *Hill v. Bonded Adjustment Ass'n* (D.C. 1979, 398 A.2d 16).

§ 28-3814. Debt collection.**NOTES TO DECISIONS**

Cited in *Hill v. Bonded Adjustment Ass'n* (D.C. 1979, 398 A.2d 16).

§ 28-3818. Lay away plans.

(a) *Definitions.* — As used in this section the term:

(1) "consumer goods" means chattels owned, used or bought by an individual for personal, family or household purposes. The term consumer goods does not include goods acquired for commercial or business use or resale;

(2) "lay away plan" means a plan or agreement whereby a seller of consumer goods offers for sale or sells such goods to a buyer on terms which contemplate completion of three (3) or more agreed payments all of which must be made prior to the release or delivery of such goods;

(3) "service charge" means a one time charge, not to exceed one dollar (\$1.00) on any lay away plan, to cover the administrative costs associated with such lay away plan: Provided, that the one dollar (\$1.00) service charge shall cover all lay away plan transactions between the retailer and a single consumer occurring in the same business day.

(b) *Disclosures.* — The seller shall, prior to the time of executing a lay away plan agreement, provide the buyer with a copy of a written, clear and conspicuous disclosure. Failure of the seller to comply with this provision shall be deemed an executed trade practice in violation of the law of the District of Columbia for which the penalties in section 6 (i) (3) of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76) shall apply. The disclosure required by this subsection shall include:

(1) a statement as to the schedule or period of payments to be made by the buyer towards the purchase of consumer goods under a lay away plan;

(2) a statement that the consumer goods identified in the lay away plan will be retained in stock or set aside from stock but retained by the seller and made available for release or delivery to the buyer upon final payment or within fourteen (14) days after final payment;

(3) a statement as to the refund and exchange policies and charges restrictive of the seller pursuant to subsections (c), (d), (f), (g) and (h) of this section to the extent applicable;

(4) a statement as to the seller's right to deduct late charges as set forth in subsection (g) of this section; and

(5) a statement that the buyer shall receive from the seller a written statement, upon request, and shall obtain a receipt for any and all payments made towards the purchase of consumer goods under a lay away plan as set forth in subsections (i) (1) and (i) (2) of this section.

(c) *Buyer's right to cancel.* — The buyer, at his option, has the right to cancel an executed lay away plan within two (2) weeks after entering into the lay away plan and to obtain a full refund of any amount of money paid toward the purchase of consumer goods under the lay away plan. Such refund is payable upon cancellation or within two (2) weeks after cancellation.

(d) *Cancellation fee.* — If a buyer notifies a seller of his intention to cancel a purchase of consumer goods under a lay away plan after the expiration of the two (2) week cancellation period set forth in subsection (c) of this section, the seller shall promptly refund the full amount of money paid by the buyer towards the purchase of the consumer goods under the lay away plan. The seller may, however, retain an amount not to exceed eight percent (8%) of the purchase price of the consumer goods purchased under the lay away plan or sixteen dollars (\$16.00), whichever is less.

(e) *Seller's default.* — If, for any reason, the seller is unable to provide the consumer goods identified in the lay away plan or their exact duplicate to the buyer upon final payment or within fourteen (14) days thereafter, the seller shall refund the entire amount paid by the buyer towards the purchase of such goods under the lay away plan plus eight percent (8%) of the purchase price of the consumer goods purchased under the lay away plan or sixteen dollars (\$16.00), whichever is less.

(f) *Charges restricted.* — The seller shall not require a buyer who has executed a lay away plan to pay a charge or fee of any kind on such goods except for those fees pursuant to subsections (d), (g) and (j) of this section to the extent applicable.

(g) *Late fee.* — If, for any reason, the buyer is unable to make payment in accordance with the terms of a lay away plan, the seller shall send prompt notice informing the buyer of the delinquency in payment. If the seller does not receive payment on the consumer goods identified in the lay away plan within fourteen (14) days after such notice is sent to the buyer, the seller may deduct an amount not to exceed one dollar (\$1.00) from the full amount of money paid by the buyer towards the purchase of such goods under the lay away plan and refund the remaining amount to the buyer.

(h) *Acceleration of payment prohibited.* — The seller shall not accelerate any payments under a lay away plan. The seller shall be entitled to the amount of payments due to date under the lay away plan including those charges pursuant to subsections (d) and (g) of this section to the extent applicable.

(i) *Receipt and statement of payments.* — (1) The seller shall promptly provide the buyer with a receipt for any and all payments made towards the purchase of consumer goods under a lay away plan. If payment is made by mail or by any means other than in person, a receipt shall be provided no later than seven (7) days after a payment is made. Such receipt shall include:

- (A) a description of the consumer goods identified in the lay away plan; and
- (B) the amount and date of such payment.

(2) The seller, upon request of the buyer, shall provide the buyer, within a reasonable time thereafter, a written statement of any and all payments made towards the purchase of consumer goods under the lay away plan. Such statement shall include:

- (A) a description of the consumer goods identified in the lay away plan;
- (B) the amount and date of any and all payments made to date;
- (C) the total of all payments made to date; and
- (D) the balance of all payments remaining.

(j) *Service charge.* — The seller is allowed to charge the buyer a service charge, which is not to exceed one dollar (\$1.00), for goods purchased under a lay away plan, to cover the administrative costs associated with such lay away plan: Provided, that the one dollar (\$1.00) service charge shall cover all lay away plan transactions between the retailer and a single consumer occurring in the same business day. (Oct. 4, 1978, D.C. Law 2-115, § 2, 25 DCR 1997; Oct. 18, 1979, D.C. Law 3-28, § 2, 26 DCR 676.)

Effect of Amendment.

1979 — Act Oct. 18, 1979, D.C. Law 3-28, amended

section by adding paragraph (3) in subsection (a), by substituting “subsections (d), (g) and (j)” for “subsections

(d) and (g)” in subsection (f), and by adding subsection (j).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the District of Columbia Consumer Lay Away Plan Service Charge Emergency Act of 1978 (D.C. Act 2-337, Dec. 29, 1978, 25 DCR 7033).

1979 — For temporary amendment of section, see sec. 2 of the District of Columbia Consumer Lay Away Plan Service Charge Emergency Act of 1979 (D.C. Act 3-17, Mar. 27, 1979, 25 DCR 9031); sec. 2 of the District of Columbia Service Charge Consumer Lay Away Plan Emergency Amendments Act of 1979 (D.C. Act 3-60, July 12, 1979, 26 DCR 350); and sec. 2 of the District of Columbia Service Charge Consumer Lay Away Plan Third Emergency Amendments Act of 1979 (D.C. Act 3-106, Oct. 12, 1979, 26 DCR 1729).

Legislative History of Law 2-115. Law 2-115 was introduced in Council and assigned Bill No. 2-130, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978 respectively. Signed by the Mayor on July 24, 1978, it was assigned Act No. 2-241 and transmitted to both Houses of Congress for its review.

Legislative History of Law 3-28. Law 3-28 was introduced in Council and assigned Bill No. 3-117, which was referred to the Committee on Services and Consumer Affairs. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on August 1, 1979, it was assigned Act No. 3-77 and transmitted to both Houses of Congress for its review.

Section referred to in sections. Title 28, Appx. §§ 4, 5.

TITLE 28.—APPENDIX

| Act | Sec. |
|---|------|
| District of Columbia Consumer Protection Procedures Act | 1 |

DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

- Sec.
- 4. Powers of the Office.
 - 5. Unlawful trade practices.

§ 4. Powers of the Office.

* * * * *

(b) The Office shall:

- (1) perform the functions of the Mayor, Office of Consumer Affairs, Board of Consumer Goods Repairs Services or Department of Economic Development in:

* * * * *

- (C) the District of Columbia Consumer Goods Repair Regulation (Regulation 74-3); and
- (D) the District of Columbia Consumer Lay Away Plan Act (D.C. Code, sec. 28-3818);

* * * * *

(As amended Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997.)

Effect of Amendment.

1978—Act Oct. 4, 1978, D.C. Law 2-115, amended section by rewording paragraph (1) (C) and adding a new paragraph (1) (D) to subsection (b).

Legislative History of Law 2-115. See note to § 28-3818.

§ 5. Unlawful trade practices.

It shall be a violation of this act, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

* * * * *

- (x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Code, or by operation or requirement of federal law;
- (y) violate any provision of the District of Columbia Consumer Lay Away Plan Act (D.C. Code, sec. 28-3818).

(As amended Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997.)

Effect of Amendment.
1978 — Act Oct. 4, 1978, D.C. Law 2-115, amended section by deleting the period at the end of subsection (x)

and inserting in lieu thereof a semicolon and by adding a new subsection (y).
Legislative History of Law 2-115. See note to § 28-3818.

TITLE 29.—CORPORATIONS

| Chap. | Sec. |
|--|---------|
| 6. Charitable, Educational, and Religious Associations | 29-601 |
| 8. Cooperative Associations | 29-801 |
| 9. Business Corporations (1954) | 29-901 |
| 10. Nonprofit Corporations | 29-1001 |
| 11. Professional Corporations | 29-1101 |

CHAPTER 6.—CHARITABLE, EDUCATIONAL, AND
RELIGIOUS ASSOCIATIONS

§ 29-601. Formation — Certificate — Contents.

Cross reference. Educational Institution Licensure
Commission, see §§ 31-2001 to 31-2008.

NOTES TO DECISIONS

Cited in *Rock Creek Gardens Tenants Ass’n v. Ferguson*
(D.C. 1979, 404 A.2d 972).

CHAPTER 8.—COOPERATIVE ASSOCIATIONS

§ 29-801. Definitions.

NOTES TO DECISIONS

Cited in *Rock Creek Gardens Tenants Ass’n v. Ferguson*
(D.C. 1979, 404 A.2d 972).

CHAPTER 9.—BUSINESS CORPORATIONS (1954)

| Sec. | Sec. |
|-------------------------------|--|
| 29-903. Purposes. | 29-935. Commissioner — Duties and functions. |
| 29-921. Incorporators. | 29-952. Reincorporation or incorporation of existing corporations. |
| 29-927. Procedure for merger. | |

§ 29-903. Purposes.

Corporations for profit may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or life insurance or the acceptance and execution of trusts, the operation of railroads, or building and loan associations: Provided, that nothing contained in this chapter shall be construed to relieve any public-utility corporation incorporated or reincorporated under the provisions of this chapter from complying with all applicable provisions of the laws of the District of Columbia relating to such corporations. (June 8, 1954, 68 Stat. 180, ch. 269, § 3; Sept. 3, 1963, 77 Stat. 137, Pub. L. 88-111, § 1(5); Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended section by striking out “except for the purpose of banking or insurance” and inserting in lieu thereof “except for the purpose of banking or life insurance.”
Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the District of Columbia Business Corporation Act

Emergency Amendments of 1978 (D.C. Act 2-221, July 5, 1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Acts 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. Law 2-117 was introduced in Council and assigned Bill No. 2-216, which was referred to the Committee on Public Services and

Consumer Affairs and to the Committee on Employment and Economic Development for comments. The Bill was adopted on first and second readings on June 27, 1978 and

July 11, 1978, respectively. Signed by the Mayor on August 1, 1978, it was assigned Act No. 2-247 and transmitted to both Houses of Congress for its review.

§ 29-919a. Removal of officers.

NOTES TO DECISIONS

Purpose of section was to insure preservation of an officer's or agent's existing contract rights while

permitting removal when in the corporation's best interest. *Sullivan v. Heritage Foundation* (D.C. 1979, 399 A.2d 856).

§ 29-921. Incorporators.

Three or more natural persons of the age of eighteen years or more may act as incorporators of a corporation by signing, verifying, and filing in duplicate in the office of the Commissioner articles of incorporation for such corporation. (June 8, 1954, 68 Stat. 198, ch. 269, § 46; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-61, amended section by striking "twenty-one" and inserting "eighteen" in lieu thereof.

Legislative History of Law 2-61. See note to § 12-302.

§ 29-927. Procedure for merger.

Any two or more domestic corporations may merge into one of such corporations in the following manner:

* * * * *

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended subsection (c) generally.
Emergency Act Amendments.
1978 — For temporary amendment of subsection (c), see sec. 2 of the District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-221, July 5,

1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. See note to § 29-903.

§ 29-933. Admission of foreign corporation — Exemption from certificate requirement in certain cases — Service of process on exempt corporations — Rules and regulations.

NOTES TO DECISIONS

Federal concessionaire subject to certification requirements. — The Secretary of the Interior's exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws

relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 29-933i. Service of process on foreign corporation.

NOTES TO DECISIONS

Cited in *Union Storage Co. v. Knight* (D.C. 1979, 400 A.2d 316); *Ramamurti v. Rolls-Royce, Ltd.* (1978, 454 F. Supp. 407).

§ 29-933m. Annual report of foreign corporations.

NOTES TO DECISIONS

Cited in *Union Storage Co. v. Knight* (D.C. 1979, 400 A.2d 316).

§ 29-934b. Revocation of certificate of authority.

NOTES TO DECISIONS

Cited in *Union Storage Co. v. Knight* (D.C. 1979, 400 A.2d 316).

§ 29-935. Commissioner — Duties and functions.

(a) The Commissioner shall be charged with the administration and enforcement of this chapter. Said Commissioner is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (j), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former last sentence of subsection (a).
Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 29-952. Reincorporation or incorporation of existing corporations.

I. REINCORPORATION

(a) Any corporation which is organized and existing under the laws of the District of Columbia on July 1, 1978, and which is organized for profit and for a purpose or purposes authorized by this chapter may avail itself of the provisions of this chapter and may become reincorporated hereunder in the following manner:

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-117, § 2, 25 DCR 1509.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-117, amended section by striking out “December 5, 1954” and inserting in lieu thereof “July 1, 1978.”
Emergency Act Amendments.
1978 — For temporary amendment of subsection (a), see sec. 2 of the District of Columbia Business Corporation Act

Emergency Amendments of 1978 (D.C. Act 2-211, July 5, 1978, 25 DCR 1389); and sec. 2 of the Second District of Columbia Business Corporation Act Emergency Amendments of 1978 (D.C. Act 2-281, Oct. 16, 1978, 25 DCR 3502).
Legislative History of Law 2-117. See note to § 29-903.

CHAPTER 10.—NONPROFIT CORPORATIONS

Sec.

29-1093. Commissioner: Duties and functions.

§ 29-1025. Removal of officers.

NOTES TO DECISIONS

Purpose of section was to insure preservation of an officer's or agent's existing contract rights while permitting removal when in the corporation's best interest. *Sullivan v. Heritage Foundation* (D.C. 1979, 399 A.2d 856).

Contract rights not created. — This section unambiguously states that appointment or election for a term does not, by itself, create contract rights. *Sullivan v. Heritage Foundation* (D.C. 1979, 399 A.2d 856).

§ 29-1093. Commissioner: Duties and functions.

* * * * *

(b) The Commissioner shall be charged with the administration and enforcement of this chapter. Said Commissioner is authorized to employ such personnel as may be necessary for the administration of this chapter, within appropriations made by Congress.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (hh), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former last sentence of subsection (b).
Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 11.—PROFESSIONAL CORPORATIONS

Cross reference. For certification and registration of accountants and accounting firms, see § 2-944 et seq.

TITLE 30.—DOMESTIC RELATIONS

| | |
|------------------------------|--------|
| Chap. | Sec. |
| 3. Uniform Support | 30-301 |

CHAPTER 3.—UNIFORM SUPPORT

§ 30-301. Purpose — Effective date.

NOTES TO DECISIONS

Cited in *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-302. Definitions.

NOTES TO DECISIONS

Duty of support incident to divorce proceeding. — Although a couple settled their joint property rights and obligations prior to receiving a divorce decree from a Colorado court, the duty of support imposed by that decree was incident to the divorce proceeding and hence enforceable under the Uniform Support Act. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

Enforcement of support and alimony order not based on prior judgment. — Although a Maryland court order for child support and alimony was not enforceable in this jurisdiction under the full faith and credit clause of the Constitution due to the potentiality under Maryland law

for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

“Duty of support” does not encompass arrearages. — Although the 1968 Model Act for the Uniform Reciprocal Enforcement of Support Act expressly provides that a duty of support includes the duty to pay arrearages, the District of Columbia has never adopted this revision, and there is nothing in the definition of the “duty of support” encompassing arrearages. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-303. Remedies additional to those now existing.

NOTES TO DECISIONS

Maryland order enforceable under Uniform Act but not under full faith and credit. — Although a Maryland court order for child support and alimony would not be enforceable in this jurisdiction under the full faith and credit clause of the Constitution due to the potentiality

under Maryland law for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht* (D.C. 1978, 387 A.2d 575).

§ 30-320. Support of illegitimate children.

NOTES TO DECISIONS

Duty to support distinct from right to visitation. — The duty to support, which is the underlying purpose for parentage proceedings and which arises automatically

upon establishment of parentage by sufficient proof, is distinct from the right to visitation. *Felder v. Allsopp* (D.C. 1978, 391 A.2d 243).

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

| Chap. | Sec. |
|---|---------|
| 1. Board of Education | 31-101 |
| 7. Retirement of Public School Teachers | 31-701 |
| 10. Gallaudet College | 31-1001 |
| 11. Miscellaneous | 31-1101 |
| 13. Educational Agency for Surplus Property | 31-1301 |
| 14. Public School Food Services | 31-1401 |
| 15. Salaries of Teachers, School Officers and Other Employees | 31-1501 |
| 17. Public Postsecondary Education Reorganization | 31-1701 |
| 19. Commission on the Arts and Humanities | 31-1901 |
| 20. Educational Institution Licensure Commission | 31-2001 |
| 21. Law School Clinical Programs Funding | 31-2101 |
| 22. Immunization of School Students | 31-2201 |

CHAPTER 1.—BOARD OF EDUCATION

| Sec. | Sec. |
|---|---|
| 31-101. Election and number of members — Term of office — Commencement of term — Compensation of members — Qualifications — Forfeiture of office for failure to maintain qualifications — Vacancies — President — Secretary — Meetings. | 31-102. [Repealed.] |
| | 31-105. Superintendent — Appointment — Term of office — Duties. |
| | 31-122. Adoption and use of seal. |

§ 31-101. Election and number of members — Term of office — Commencement of term — Compensation of members — Qualifications — Forfeiture of office for failure to maintain qualifications — Vacancies — President — Secretary — Meetings.

* * * * *

(b) (1) Except as provided in paragraph (3) of this subsection and section 1-1110(e), the term of office of a member of the Board of Education shall be four years.

* * * * *

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term. However, the term of office of a member of the Board of Education elected in the general election for member of the Board of Education to be held in 1973 and thereafter shall expire at noon of the thirtieth day after the Board of Elections certifies the results of the election for members of the Board of Education in the fourth year of such member's term. The term of a member of the Board of Education elected in the general election to be held in 1977 and thereafter shall begin immediately upon the expiration of the term preceding it.

(4) The members may receive compensation at a rate fixed by the District of Columbia Council, which shall not exceed a sum as provided in section 1-341.10.

* * * * *

(As amended Aug. 18, 1978, D.C. Law 2-101, § 4, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3204 (a), 25 DCR 5740.)

Effect of Amendments.

1978 — Act Aug. 18, 1978, D.C. Law 2-101, amended section by striking “, including any runoff election,”.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “a sum as provided in section 1-341.10” for “\$1,200 per annum” in paragraph (4) of subsection (b).

Legislative History of Law 2-101. See note to § 1-1101.

Legislative History of Law 2-139. See note to § 1-331.1.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Capacity to sue and be sued. — This section does not provide that the Board is a body corporate having the capacity to sue and be sued. *Kelley v. Morris* (D.C. 1979, 400 A.2d 1045).

Terms of office are “staggered” to ensure smooth transitions in administration. *Barry v. District of*

Columbia Bd. of Elections & Ethics (448 F. Supp. 1249, appeal dismissed for lack of standing, 1978, 580 F.2d 695, 188 U.S. App. D.C. 432).

§ 31-102. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3204(g), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 31-104a. Members exempt from personal liability — Costs and supersedeas bond.**NOTES TO DECISIONS**

Purpose of section is to allow citizens to serve as Board members without endangering their personal financial security. *Kelley v. Morris* (D.C. 1979, 400 A.2d 1045).

§ 31-105. Superintendent — Appointment — Term of office — Duties.

The Board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the Board and the right to speak on all matters before the Board, but not the right to vote. The Board of Education is authorized to delegate any of its authority to the superintendent. The superintendent is authorized to redelegate any of his or her authority subject to the approval of the Board. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90-292, § 3(d), 82 Stat. 102; Mar. 3, 1979, D.C. Law 2-139, § 3204 (h), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding the last two sentences.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 31-122. Adoption and use of seal.

The Board of Education of the District of Columbia is hereby authorized to adopt, alter and use a seal which shall be judicially noticed, and to prescribe rules and regulations as may be deemed necessary to implement this section. (Aug. 2, 1978, D.C. Law 2-96, § 2, 25 DCR 1772.)

Legislative History of Law 2-96. Law 2-96 was introduced in Council and assigned Bill No. 2-111, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and

second readings on April 18, 1978 and May 2, 1978, respectively. Signed by the Mayor on May 26, 1978, it was assigned Act No. 2-200 and transmitted to both Houses of Congress for its review.

CHAPTER 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

Sec.

- 31-707. Longevity payable from District revenues — Reserves held by Treasurer of United States — Interest.
- 31-715. Records to be kept by Commissioner of the District of Columbia.
- 31-716, 31-716a. [Repealed.]

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

- 31-721. Deductions — Interest bearing accounts — Optional deposits — Refunds.
- 31-721a. Retirement credit for certain leave without pay — Matching retirement deposits.
- 31-722. Retirement and annuity fund — Income from investments — Separate accounts.
- 31-724. Disability — Annual examination — Reappointment — Discontinued annuity — Voluntary deposits.
- 31-725. Computation of annuity — Options.
- 31-727. [Repealed.]
- 31-728. Term of service — Reduction of annuity — Contributions of leave — Monthly deposits.

Sec.

- 31-729. Deferred annuity — Refunds — Deposit of amount withdrawn — Annuity to survivors — Termination and restoration of annuity — Determination of dependency and disability.
- 31-730. Beneficiaries — Order of precedence for payment of lump-sum benefits — Payment of lump-sum credit — Definitions.
- 31-734. Records and accounts — Report to Congress.
- 31-735. [Repealed.]
- 31-737. Funds not assignable or subject to execution.
- 31-739a. Adjustment of annuities on basis of price index — Computation — Definitions.
- 31-739.1. Application of amendment to section 31-739a.
- 31-739e. Computation of interest.
- 31-739f. Reduction of salary of retired teacher who is subsequently employed.
- 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers' retirement and annuity fund — Conditions under which annuities and increases terminate after July 1, 1960.
- 31-745. Crediting of certain authorized leave periods for retirement purposes — Conditions.

Subchapter I.—Retirement Before June 30, 1946

§ 31-707. Longevity payable from District revenues — Reserves held by Treasurer of United States — Interest.

The second and third parts of the annuity provided for by section 31-705 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid.

The reserves created as the result of such annual appropriations shall be held by the Treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at four per centum per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1; Nov. 17, 1979, Pub. L. 96-122, § 146(c)(1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by deleting the former last two sentences of the first paragraph.

§ 31-715. Records to be kept by Commissioner of the District of Columbia.

The Commissioner of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide

for future valuations and adjustments of the plan for the retirement of teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14, formerly § 15; renumbered and amended June 11, 1926, 44 Stat. 730, ch. 556, § 1; Nov. 17, 1979, Pub. L. 96-122, § 146(c)(2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by deleting the former last two sentences.

§ 31-716. Repealed. Nov. 17, 1979, Pub. L. 96-122, § 146(c)(3), 93 Stat. 866.

§ 31-716a. Repealed. Nov. 17, 1979, Pub. L. 96-122, § 146(b), 93 Stat. 866.

Subchapter II.—Retirement After June 30, 1946

§ 31-721. Deductions — Interest bearing accounts — Optional deposits — Refunds.

Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7 per centum of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of this subchapter and thereafter at 3 per centum per annum, compounded annually from December 31 of the year in which the deductions are made: Provided, that such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed five years of eligible service interest shall be credited to the date of separation or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier. These individual interest-bearing accounts shall be kept by the Auditor of the District of Columbia. After the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), any amounts deducted and withheld pursuant to this paragraph shall be paid to the Custodian of Retirement Funds (as defined in section 1-1802 (b)) for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813(a).

Any teacher may at his option and under such regulations as may be prescribed by the District of Columbia Council deposit with the Custodian of Retirement Funds additional sums in multiples of \$25 but not to exceed 10 per centum per annum of his annual salary, pay, or compensation for services rendered since March 1, 1920, which amount together with interest thereon computed in accordance with section 31-739e (a) shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Council, in addition to the annuity provided by this subchapter; the purchase price of such annuity shall be based upon the interest rate computed in accordance with section 31-739e (a) and upon such table of mortality as shall from time to time be prescribed by the Council. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3 per centum compounded annually from December 31 of the year in which the deposits are made to the date of such death or separation or the end of the 90-day period beginning on the date of enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier shall be refunded in accordance with the provisions of sections 31-729 and 31-730, respectively. A separate individual account shall be kept by the Auditor of the District of Columbia with respect to the voluntary deposits and interest of each teacher. (Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(1),

81 Stat. 747; May 22, 1970, Pub. L. 91-263, § 1(d)(1), 84 Stat. 257; Nov. 17, 1979, Pub. L. 96-122, §§ 123 (b) (1) (A), 253 (a) (1), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding “or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier” at the end of the second sentence of the first paragraph, by adding the last sentence in the first paragraph, by substituting “Custodian of Retirement Funds” for “Collector of Taxes, District of Columbia,” “computed in accordance with section 31-739e(a)” for “at 3 per centum per annum compounded as of December 31 of each year” and “the interest rate computed in accordance with section 31-739e(a)” for “an interest rate of 3 per centum per

annum compounded annually” in the first sentence of the second paragraph, and by inserting “to the date of such death or separation or the end of the 90-day period beginning on the date of enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier” in the second sentence of the second paragraph.

Effective date. Sections 123 (d) and 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 31-739e.

§ 31-721a. Retirement credit for certain leave without pay — Matching retirement deposits.

* * * * *

(b) A teacher may deposit with interest computed in accordance with section 31-739e (b), an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, prior to May 22, 1970, as a full-time officer or employee of an organization composed primarily of teachers, and may receive full retirement credit for such period or periods of leave without pay. In the event of the death of such teacher any individual entitled to annuity under this subchapter may make such deposit.

(As amended Nov. 17, 1979, Pub. L. 96-122, § 253 (a) (2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by substituting “computed in accordance with section 31-739e (b)” for “at 4 per centum compounded annually” in the first sentence of subsection (b).

Effective date. Section 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment

to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 31-739e.

§ 31-722. Retirement and annuity fund — Income from investments — Separate accounts.

Until the end of the ninety-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the teachers' retirement and annuity fund. As of the effective date of this subchapter, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of sections 31-702 and 31-707. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter, and for payment of administrative expenses incurred by the Commissioner of the District of Columbia in placing in effect each annuity adjustment granted under section 31-739a. Separate accounts shall be maintained by the Treasury with respect to (1) the regular operations of the retirement system, exclusive of those incident to the voluntary deposits; and (2) the voluntary deposits and the supplementary annuities and refunds resulting from such deposits. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2; July 5, 1966, 80 Stat. 267, Pub. L. 89-494, § 2; Nov. 17, 1979, Pub. L. 96-122, § 123 (b) (1) (B), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding “Until the end of the ninety-day period beginning on the date of the enactment

of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.)” to the beginning of the first sentence.

Effective date. Section 123 (d) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day

period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 1-1813, 31-739.1.

§ 31-723. Voluntary and involuntary retirement — minimum period of service — Eligibility for retirement — Separation from service — Computation of length of service — Computation, commencement and termination of annuity.

Section referred to in section. 31-724.

§ 31-724. Disability — Annual examination — Reappointment — Discontinued annuity — Voluntary deposits.

Any teacher who completes five years of eligible service, and who, before becoming eligible for retirement under the conditions defined in sections 31-721 to 31-723, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31-725 and 31-726 and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of Public Health of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in section 31-723 hereof, be examined under the direction of the Director of Public Health of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of Public Health of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

Notwithstanding the foregoing provisions of this section, if during any calendar year an annuitant who is receiving a disability annuity under this section and who has not reached retirement age (as defined in section 31-723) receives income from wages or self-employment,

or both, in an amount not less than 80 per centum of the current rate of pay of the position occupied by the annuitant before retirement, the annuity of such annuitant shall be terminated by the Board of Education effective January 1 of the first calendar year after such calendar year, except that this sentence shall not apply with respect to income received during the year in which the annuitant retired. The annuity of any annuitant whose annuity is terminated under the preceding sentence shall be restored, at the rate which would have been in effect but for such termination, effective January 1 of any year following a year during which the amount of such annuitant's income from wages and self-employment is less than 80 per centum of the current rate of pay of the position occupied by the annuitant before retirement, or effective immediately if the Board of Education determines that, outside of normal fluctuations in such annuitant's income, such annuitant's income is reduced to a level which on an annual basis is less than 80 per centum of such current rate of pay.

In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of this subchapter, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of section 31-729 hereof: Provided, however, that if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of section 31-721, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of this subchapter, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of section 31-721. (Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(3), 81 Stat. 747; Nov. 17, 1979, Pub. L. 96-122, § 256, 93 Stat. 866.)

Effect of Amendment.
1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866,
amended section by inserting the third paragraph.

§ 31-725. Computation of annuity — Options.

* * * * *

(b) Any teacher retiring under the provisions of section 31-723 or 31-724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to the surviving widow or widower of such teacher. The life annuity of a teacher making such election, or any portion of such annuity designated by the teacher in writing for such purposes at the time of retirement, shall be reduced by 2½ per centum of so much thereof as does not exceed \$3,600 and by 10 per centum of so much thereof as exceeds \$3,600. The widow or widower of a teacher making such election shall be entitled to an annuity equal to 55 per centum of such life annuity, or designated portion thereof, except that if a retired teacher who has elected a reduced annuity as provided in this paragraph or in subsection (d) of this section dies and is survived by a widow or widower whom he or she married after retirement, such widow or widower is entitled to an annuity in an amount which would have been paid had the teacher been married to the widow or widower at the time of retirement, but only if (A) such widow or widower was married to such individual for at least two years immediately preceding the teacher's death, or is the mother or father of issue of such marriage, and (B) such widow or widower elects this annuity instead of any other survivor benefit to which he or she may be entitled under this Act or another retirement system for employees of the Federal or District Government. The annuity of a widow or widower entitled to an annuity under this paragraph shall begin on the day after the retiree dies. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or widower does, or (B) the widow or widower remarries before becoming sixty years of age. In

the case of a surviving widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if —

* * * * *

(ii) any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a).

* * * * *

(4) In the event an individual designated as a surviving widow or widower or as a survivor annuitant under this subsection predeceases the teacher designating such individual, the annuity of such teacher shall, effective the day after the death of such individual, be the amount it would have been if no such beneficiary had been named.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 123 (b) (1) (C), 255 (a), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in subsection (b), by substituting "repaid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a)" for "returned to the teachers' retirement and annuity fund established under section 31-722" in paragraph (1) (ii) and by adding paragraph (4).

Effective date. Section 123 (d) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to subsection (b) (1) (ii) of this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122, and section 255 (b) of Pub. L. 96-122 provided that subsection (b) (4) of this section shall take effect on Oct. 1, 1978, or at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122, whichever is later.

§ 31-727. Repealed. Nov. 17, 1979, Pub. L. 96-122, § 146 (a) (1), 93 Stat. 866.

§ 31-728. Term of service — Reduction of annuity — Contributions on leave — Monthly deposits.

The years of service which form the basis for determining the amount of the annuity provided in section 31-725 (a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: Provided, that deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been in a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based. In computing an annuity under section 31-725 (a) the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under subchapter III of chapter 83 of title 5, U.S. Code [relating to retirement of government employees]; (d) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United

States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included unless such retired pay is awarded on account of a service-connected disability (1) incurred in combat with an enemy of the United States or (2) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1, or is awarded under title III of Public Law 910, Eightieth Congress; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637; and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to appointment as a teacher in the public schools of the District of Columbia: Provided, however, that that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: Provided further, that no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31-632 to 31-637, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to (1) the accumulated contributions which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed, and (2) interest thereon computed in accordance with section 31-739e (b): Provided further, that all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31-721, but otherwise no provision of this subchapter shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31-632 to 31-637. If the teacher so elects he may deposit the required sum in the teacher's retirement and annuity fund in monthly installments, upon making a claim with the Commissioner of the District of Columbia, or his designated agent. Except as otherwise provided in this paragraph, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this subchapter, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this subchapter, except that such teacher shall not be considered as retaining his teaching position beyond six months after the date of the approval of this Act or the expiration of five years of such military service, whichever is later.

Nothing in this subchapter shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided.

Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of section 31-1532 (d) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Dec. 29, 1967, Pub. L. 90-231, § 1(5), 81 Stat. 748; May 22, 1970, Pub. L. 91-263, § 1(b), 84 Stat. 257; Oct. 21, 1972, Pub. L. 92-518, title II, §§ 201 (3), 202 (a) (1), 203 (b), 86 Stat. 1013, 1014; Nov. 17, 1979, Pub. L. 96-122, § 253 (a) (3), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in the first paragraph, by inserting "(1)" and "and (2) interest thereon computed in accordance with section 31-739e (b)" and deleting "and interest" following "accumulated contributions" in the second proviso in the sixth sentence, and by deleting "with interest at 3 per centum per annum compounded annually" following "installments" in the seventh sentence.

Effective date. Section 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day

period beginning on the date of the enactment of Pub. L. 96-122.

Succession in Government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 31-739e.

§ 31-729. Deferred annuity — Refunds — Deposit of amount withdrawn — Annuity to survivors — Termination and restoration of annuity — Determination of dependency and disability.

(a) Should any teacher to whom this subchapter applies, after completing five years of eligible service and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity, computed as provided in section 31-725, beginning at the age of sixty-two years and terminating on the date of his death: Provided, that any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon (computed to the date of separation or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier), or any voluntary contributions made under the provisions of section 31-721, with interest (computed to the date of separation or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier): Provided further, that no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall repay to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a), the amount so withdrawn by him (including the interest thereon) plus interest computed in accordance with section 31-739e (c): And provided further, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred.

(b) (1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least eighteen months of eligible service and is survived by a widow, or widower, such widow or widower shall be paid an annuity beginning the day after the teacher dies, equal to 55 per centum of the amount of an annuity computed as provided in subsection (a) of section 31-725 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of (i) 40 per centum of his average salary, or (ii) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become sixty years of age. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or widower dies, or (B) the widow or widower remarries before becoming sixty years of age. In the case of a widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if —

* * * * *

(ii) any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a).

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, §§ 123 (b) (1) (D), (E), 253 (a) (4), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section, in subsection (a), by inserting “(computed to the date of separation or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), whichever is earlier)” twice in the first proviso, by inserting “(including the interest thereon) plus interest computed in accordance with section 31-739e(c)” in the second proviso, by substituting “repay to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a)” for “deposit in the fund” in the second proviso, and by deleting “with interest at 3 per centum compounded annually” at

the end of the last proviso, and in subsection (b) (1) (ii), by substituting “repaid to the Custodian of Retirement Funds (as defined in section 1-1802 (6)) for deposit in the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a)” for “returned to the teachers’ retirement and annuity fund established under section 31-722.”

Effective date. Sections 123 (d) and 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 31-739e.

§ 31-730. Beneficiaries — Order of precedence for payment of lump-sum benefits — Payment of lump-sum credit — Definitions.

* * * * *

(f) For purposes of this section, the term “lump-sum credit” means the unrefunded amount consisting of —

* * * * *

(3) interest, earned prior to the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) on the deductions and deposits made with respect to service which aggregates more than one year but excluding interest for the fractional part of a month in the total service.

(As amended Nov. 17, 1979, Pub. L. 96-122, § 253 (a) (5), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting “earned prior to the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.)” in paragraph (3) of subsection (f).

Effective date. Section 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 31-733. Definitions.

Section referred to in section. 1-1802.

§ 31-734. Records and accounts — Report to Congress.

The Commissioner of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. Until such time as all amounts in the teachers’ retirement and annuity fund have been expended or transferred to the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a), the Commissioner of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14; Nov. 17, 1979, Pub. L. 96-122, § 146 (a) (2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding “Until such time as all amounts in the teachers’ retirement and annuity fund have been

expended or transferred to the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a)” at the beginning of the present last sentence, and by deleting the former last sentence.

§ 31-735. Repealed. Nov. 17, 1979, Pub. L. 96-122, § 146 (a) (3), 93 Stat. 866.

§ 31-737. Funds not assignable or subject to execution.

None of the money mentioned in this subchapter (including any assets of the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a)) shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17; Nov. 17, 1979, Pub. L. 96-122, § 123 (b) (1) (F), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by inserting “(including any assets of the District of Columbia Teachers’ Retirement Fund established by section 1-1813 (a)).”

Effective date. Section 123 (d) of Act Nov. 17, 1979, Pub.

L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 31-739a. Adjustment of annuities on basis of price index — Computation — Definitions.

* * * * *

(b) (1) The Mayor shall —

(A) on January 1 of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for December of the preceding year over the price index published for June of the preceding year, and

(B) on July 1 of each year, or within a reasonable time thereafter, determine the per centum change in the price index published for June of such year over the price index published for December of the preceding year.

(2) If in any year the per centum change determined under either paragraph (1) (A) or (1) (B) indicates a rise in the price index, then —

(A) in the case of an increase under paragraph (2) (A), (i) each annuity described in paragraph (2) having a commencing date not later than March 1 of such year shall, effective such March 1, be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, and (ii) each annuity described in such paragraph having a commencing date after such March 1 but before the effective date of the next increase in annuities under this paragraph shall, effective such commencing date, be increased by such per centum, or

(B) in the case of an increase under paragraph (2) (B), (i) each annuity described in paragraph (2) having a commencing date not later than September 1 of such year shall, effective such September 1, be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, and (ii) each annuity described in such paragraph having a commencing date after such September 1 but before the effective date of the next increase in annuities under this paragraph shall, effective such commencing date, be increased by such per centum change, adjusted to the nearest one-tenth of 1 per centum.

(c) Eligibility for an annuity increase under this section shall be as provided in subsection (b) (2), except as follows:

(1) Effective from its commencing date, an annuity payable to an annuitant’s survivor (other than a child entitled under section 31-729 (b) (3)), which annuity commences the day after the annuitant’s death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

* * * * *

(As amended Nov. 17, 1979, Pub. L. 96-122, § 251 (a) (1), (b), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by rewriting subsection (b), and by substituting “as provided in subsection (b) (2)” for “governed by the commencing date of each annuity payable from the fund as of the effective date of an increase” in the introductory language and deleting “from the fund” following “payable” in paragraph (1) of subsection (c).

Effective date. Section 251 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in section. 31-739.1.

§ 31-739.1. Application of amendment to section 31-739a.

The amendment made by Pub. L. 96-122, section 251 (a) (1), to section 31-739a (b) shall apply to any increase after the effective date of such amendment in annuities payable from the District of Columbia teachers' retirement and annuity fund established by section 31-722 or from the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a), except that with respect to the first date after the effective date of such amendment on which the Mayor is to determine a per centum change, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index published for the last month before such effective date for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under section 31-739a (b), as in effect immediately before the amendment of such section by Pub. L. 96-122, section 251 (a) (1). (Nov. 17, 1979, Pub. L. 96-122, § 251 (a) (2), 93 Stat. 866.)

§ 31-739e. Computation of interest.

(a) For purposes of determining the amount available to purchase an annuity under the second paragraph of section 31-721, interest shall be deemed to accrue on deposits at the following rates for the following periods:

(1) Prior to the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), interest shall accrue at the rate of 3 per centum per annum compounded as of December 31 of each year.

(2) For the period beginning at the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and ending on September 30, 1981, interest shall accrue at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum).

(3) After October 1, 1981, interest shall accrue at an annual rate which (as determined by the Mayor of the District of Columbia) is equal to the average annual rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Teachers' Retirement Fund established by section 1-1813.

(b) Interest required on deposits under section 31-721a (b) or 31-728, or under section 31-745, shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Teachers' Retirement Fund (established by section 1-1813) for the period beginning on the first day of the first month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the first payment if he makes installment deposits, except that —

(A) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits; and

(B) for so much of any such period which occurs prior to the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

(c) Interest required on deposits under section 31-729 (a) shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Teachers' Retirement Fund (established by section 1-1813) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the first payment if he makes installment deposits, except that —

(A) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits; and

(B) for so much of any such period which occurs prior to the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

(Nov. 17, 1979, Pub. L. 96-122, § 253 (a) (6), 93 Stat. 866.)

Effective date. Section 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 31-721, 31-721a, 31-728, 31-729, 31-745.

§ 31-739f. Reduction of salary of retired teacher who is subsequently employed.

Notwithstanding any other provision of law, the salary of any retired teacher who first becomes entitled to an annuity under this subchapter after the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Code, sec. 1-1801 et seq.) and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such teacher's annuity under this subchapter and compensation for such employment is equal to the salary otherwise payable for the position held by such teacher. (Nov. 17, 1979, Pub. L. 96-122, § 257, 93 Stat. 866.)

§ 31-744. Annuities under sections 31-741 to 31-743 to be paid from District of Columbia teachers retirement and annuity fund — Conditions under which annuities and increases terminate after July 1, 1960.

The annuities and increases in annuities provided by sections 31-741 to 31-743 shall be paid from the District of Columbia teachers retirement and annuity fund until such time as all amounts in such fund have been expended or transferred under section 1-1813 (b) to the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a) and thereafter from the District of Columbia Teachers' Retirement Fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, sections 31-741 to 31-743 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by sections 31-741 to 31-743 for any fiscal year for which the Congress shall have made provisions for the payment of like annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218). (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4; Nov. 17, 1979, Pub. L. 96-122, § 123 (b) (2), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by adding "until such time as all amounts in such fund have been expended or transferred under section 1-1813 (b) to the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a) and thereafter from the District of Columbia Teachers' Retirement Fund" at the end of the first sentence.

Effective date. Section 123 (d) of Act Nov. 17, 1979, Pub.

L. 96-122, 93 Stat. 866, provided that the 1979 amendment to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

§ 31-745. Crediting of certain authorized leave periods for retirement purposes — Conditions.

Any teacher who, on or after June 27, 1960, retires pursuant to this subchapter, shall be entitled to have included in the years of service creditable to him for retirement purposes any period of authorized leave of absence which was taken by him without pay, and for educational purposes; except that credit for any such period shall be conditioned upon payment by such teacher to the Custodian of Retirement Funds (as defined in section 1-1802 (6)), for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a) of a sum equal to the accumulated contributions which would have been credited to his individual account if he had remained on active duty in the public schools of the District of Columbia during any such period plus interest computed in accordance with section 31-739e (b): Provided, that in order to receive such retirement credit a teacher must produce evidence satisfactory to the Superintendent of Schools of the District of Columbia that the authorized leave of absence without pay was taken for educational purposes. (June 27, 1960, 74 Stat. 222, Pub. L. 86-525; Nov. 17, 1979, Pub. L. 96-122, §§ 123 (b) (3), 253 (b), 93 Stat. 866.)

Effect of Amendment.

1979 — Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, amended section by substituting "payment" for "the deposit" and "Custodian of Retirement Funds (as defined in section 1-1802 (6)), for deposit in the District of Columbia Teachers' Retirement Fund established by section 1-1813 (a) for "credit of the teachers' retirement and annuity fund of the District of Columbia," by deleting "and interest"

following "contributions" and by inserting "plus interest computed in accordance with section 31-739e (b)."

Effective date. Sections 123 (d) and 253 (c) of Act Nov. 17, 1979, Pub. L. 96-122, 93 Stat. 866, provided that the 1979 amendments to this section shall take effect at the end of the ninety-day period beginning on the date of the enactment of Pub. L. 96-122.

Section referred to in sections. 1-1813, 31-739e.

CHAPTER 10.—GALLAUDET COLLEGE

*Subchapter I.—Continuation and Administration***§ 31-1023. Purchase of supplies.**

Use of General Services Administration. Title 1, chapter V of Act Sept. 8, 1978, Pub. L. 95-355, 92 Stat. 531, provided that Gallaudet College is authorized to make purchases through the General Services Administration.

*Subchapter II.—Model Secondary School For The Deaf***§ 31-1051. Authorization of appropriations.**

Transfer of functions. Act Oct. 17, 1979, Pub. L. 96-88, 93 Stat. 668, transferred to the Secretary of Education all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare under the Model Secondary School for the Deaf Act.

CHAPTER 11.—MISCELLANEOUS

Sec.

31-1122. Official expenses.

§ 31-1122. Official expenses.

The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Superintendent of Schools, and the Chief Executive Officer of the University of the District of Columbia are each hereby authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462.)

Effect of Amendment.

1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by rewriting the first sentence.

Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 25 DCR 390).

Legislative History of Law 2-111. See note to § 1-262a.

Emergency Act Amendment.

1978 — For temporary amendment of first sentence of section, see sec. 2 of the Official Purposes Funds

CHAPTER 13.—EDUCATIONAL AGENCY FOR
SURPLUS PROPERTY

Sec.

31-1302. Working capital fund provided — Rules and regulations of Agency.

§ 31-1302. Working capital fund provided — Rules and regulations of Agency.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding \$15,000 as a working capital fund for the operation of the Agency, which fund shall be used as a permanent revolving fund for all necessary expenses of such Agency. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational institutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Agency. The Mayor is authorized to promulgate rules and regulations governing the manner in which the Agency shall carry out its duties, including the fixing of

reasonable fees to be charged for its services. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2; Aug. 1, 1979, D.C. Law 3-13, § 2, 25 DCR 10563.)

Effect of Amendment.
1979 — Act Aug. 1, 1979, D.C. Law 3-13, amended section by substituting “Mayor” for “District of Columbia Council” in the last sentence.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the D.C. Surplus Property Emergency Authority Act of 1978 (D.C. Act 2-255, Aug. 8, 1978, 25 DCR 2215); and sec. 2 of the Second District of Columbia Surplus Property Emergency Authority Act of 1978 (D.C. Act 2-284, Oct. 25, 1978, 25 DCR 4308).
1979 — For temporary amendment of section, see sec. 2 of the First District of Columbia Surplus Property Emergency Authority Act of 1979 (D.C. Act 3-1, Jan. 23,

1979, 25 DCR 7676); sec. 2 of the Second District of Columbia Surplus Property Emergency Authority Act of 1979 (D.C. Act 3-30, Apr. 25, 1979, 25 DCR 9746); and sec. 2 of the District of Columbia Surplus Property Third Emergency Authority Act of 1979 (D.C. Act 3-61, July 12, 1979, 26 DCR 355).
Legislative History of Law 3-13. Law 3-13 was introduced in Council and assigned Bill No. 3-50, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-50 and transmitted to both Houses of Congress for its review.

CHAPTER 14.—PUBLIC SCHOOL FOOD SERVICES

Sec.
31-1402. Powers of the Board.

§ 31-1402. Powers of the Board.

For carrying out the purposes of this chapter, the Board is empowered —

* * * * *

(c) upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management.

* * * * *

(e) upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money which shall be deposited in the fund created by section 31-659¹, and of personal property.
(As amended Mar. 3, 1979, D.C. Law 2-139, § 3204 (c), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence in subsection (c) and “and volunteer personnel service” following “property” from the end of subsection (e).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

Subchapter I.—Salary Schedule

Sec.
31-1501a. [Repealed.]

Subchapter III.—Method of Assignment of Employees to Salary Schedules

31-1522. Types of positions to which chapter applies — Authority of Board to determine which

positions meet established criteria and other matters — Teacher-aide positions — Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

Subchapter I.—Salary Schedule

§ 31-1501. Salaries of teachers, school officers and other employees — Service steps.

Increase in rates. Section 2 of act June 20, 1978, D.C. Law 2-80, 24 DCR 9050, provided: “(a)(1) The Mayor of the District of Columbia shall ascertain the average percentage to be used by the President of the United States in adjusting the rates of pay (to be effective October 1, 1977) under section 5305 (a) (2) of Title 5 of the United

States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under section 5305 (c) of Title 5 and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in section 1 of the "District of Columbia Teachers' Salary Act of 1955", approved August 5, 1955 (69 Stat. 521; D.C. Code, sec. 31-1501) on the first pay period after October 1, 1977, to reflect the average percentage increase given to General Schedule employees, or if the alternative plan becomes effective as provided in section 5305 of Title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under the alternative plan of the President of the United States. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage of the Presidential adjustments of rates of pay under section 5305 (m) of Title 5 of the United States Code.

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under section (2) (a) (2) of this act shall be effective on and payable for the first day of the first pay period beginning on or after October 1, 1977, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay which become effective under this section shall be the rates of pay for each class and service step concerned as if those rates had been set by statute and shall remain in effect through September 30, 1978.

(c) The rates of pay that take effect under this section shall be published in the District of Columbia Register."

Section 3 of said act provided: "(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this act only in the case of an individual in the service of the Board of Education of the District of Columbia or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this act: Except, that such retroactive compensation or salary shall be paid:

(1) to any employee covered in this act who retired during the period beginning on the first day of the first pay period which began on or after October 1, 1977, and ending on the date of enactment of this act, for services rendered during such period; and

(2) in accordance with the provisions of subchapter VIII of chapter 55 of Title 5 of the United States Code (relating to settlement of accounts of deceased employees),

for services rendered during the period beginning on the first pay period which began on or after October 1, 1977, and ending on the date of enactment of this act, by any such employee who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service shall include the period provided by law for the mandatory restoration of such individual to a position in or under the government of the District of Columbia.

(c) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of Title 5 of the United States Code (relating to government employees' group life insurance), all changes in rates of compensation of salary which result from the enactment of this act shall be held and considered to be effective as of the date of enactment of this act."

Section 5 of said act provided: "The process, authorized elsewhere in this act, whereby the salaries of District of Columbia teachers are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1977 and ending on September 30, 1978."

Salary Act of 1955 Superseded. Section 3204 (d) of Act Mar. 3, 1979, D.C. Law 2-139, provided that the provisions of the District of Columbia Teachers' Salary Act of 1955, as amended, are deemed to be superseded for persons appointed on or after the date this act becomes effective as provided in section 1-366.1.

Emergency Act Amendments.

1978 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 101 and 201 of the D.C. Police, Firefighters and Teachers' Salary Act Amendments Emergency Act of 1978 (D.C. Act 2-160, Mar. 15, 1978, 24 DCR 8080); secs. 2, 3 and 5 of the First Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-245, Aug. 1, 1978, 25 DCR 1499); and secs. 2, 3 and 5 of the Second Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 2-294, Nov. 1, 1978, 25 DCR 5085).

1979 — For temporary adjustment of the rates of pay in the salary schedule, see secs. 2, 3 and 5 of the Third Emergency District of Columbia Police, Firefighters' and Teachers' Salary Act Amendment of FY 1979 (D.C. Act 3-4, Feb. 14, 1979, 25 DCR 8698).

Section referred to in sections. 1-341.14, 1-366.1.

§ 31-1501a. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3207 (e), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter III.—Method of Assignment of Employees to Salary Schedules

§ 31-1522. Types of positions to which chapter applies — Authority of Board to determine which positions meet established criteria and other matters — Teacher-aide positions — Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

* * * * *

(b) The Board is authorized to determine which positions meet the criteria specified in

subsection (a) of this section and to establish or transfer positions covered under other wage or salary fixing acts or authorities to the coverage of this chapter. Similarly, the Board is authorized to determine that positions covered under this chapter do not meet the criteria specified in subsection (a) of this section and to remove any such position from the coverage of this chapter: Provided, that any employee occupying any position covered by this chapter on July 1, 1955, but which is later determined not to meet the criteria specified in subsection (a) of this section, shall continue to be entitled to the salary and other benefits of this chapter as long as he remains in such position. The Board is authorized to specify for any position to be brought under this chapter, the class and group as established in this chapter which shall apply to such position: Provided, that such class shall be selected on the basis of the difficulty, responsibility, and qualification requirements of such position. Positions brought under this chapter in accordance with this section shall be subject to the provisions of this chapter to the same degree and in all respects as if such positions were specifically named in this chapter. The Board is authorized to conduct such studies as are required to apply the criteria specified in subsection (a) of this section. The Board of Education of the District of Columbia is authorized to make a study of the classification of the positions covered under this chapter for the purpose of determining what classification adjustments may be necessary or desirable to provide a classification alinement based on the difficulty, responsibility, and qualification requirements of the positions and to take such appropriate corrective action as is concurred in by the Council: Provided, that any such adjustments shall be made within the classes established by this chapter: Provided further, that no adjustment resulting from this study shall decrease the existing rate of compensation of any present employee, but when a position becomes vacant any subsequent appointee to such position shall be compensated in accordance with the rate of pay determined to be applicable to such position. If a position is placed in a lower salary class and the present salary of the incumbent falls between two step rates for the newly assigned class he shall receive the higher of such rates. If a position is placed in a higher salary class, placement for salary purposes shall be made in accordance with section 31-1536.

* * * * *

(d) The initial assignment of each position of school principal in the public school system of the District of Columbia to one of the four principal levels within salary class 6 of the salary schedule in section 31-1501 shall be made in accordance with the following provisions:

(1) Within 60 days following the date of enactment of this subsection [November 13, 1966], the Board of Education shall assign each position of school principal to one of the four principal levels within salary class 6 of the salary schedule in section 31-1501. Such assignment shall be made on the basis of an evaluation by the Board of Education of the duties and responsibilities of each position of school principal in the school administered by the person holding such position. Such evaluation shall be based on (A) such workload factors as (i) the academic program, (ii) the number of teachers, nonteaching personnel, and other professional and nonprofessional personnel supervised, (iii) school enrollment, (iv) cocurricular activities, (v) extracurricular activities, and (vi) community activities; and (B) such other factors as the Board of Education deems appropriate. The initial assignment of a position of school principal to a principal level within salary class 6 shall be effective on July 1, 1966.

* * * * *

(e) On July 1, 1967, and on July 1 of each year thereafter, the Board of Education shall evaluate the duties and responsibilities of each position of school principal on the basis of the factors prescribed in paragraph (1) of subsection (d) of this section to determine whether the principal level within salary class 6 to which such position is assigned is commensurate to the duties and responsibilities of such position. The Board of Education may assign a position of school principal to a different principal level within salary class 6 only if it determines on the basis of three consecutive annual evaluations that such assignment should be made. A person holding a position of school principal which the Board of Education has assigned to a different

principal level shall not be placed in a lower service step in the new principal level than the service step he occupied immediately prior to such assignment.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3204 (e), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section, in subsection (b), by deleting “with the concurrence of the District of Columbia Council” following “Board” in the first sentence, “with the concurrence of the said Council” following “Board” in the second sentence, “subject to the concurrence of the said Council” following “Board” in the third sentence and “with the cooperation of the Council” following “District of Columbia” in the sixth sentence, and by deleting “with the cooperation of the Commissioner of the District of Columbia” following “Board of Education” in the first two sentences of

paragraph (1) of subsection (d) and in the first sentence of subsection (e).
Legislative History of Law 2-139. See note to § 1-331.1.
Subsection (c) superseded. Section 3204 (e) (2) of Act Mar. 3, 1979, D.C. Law 2-139, provided that subsection (c) of this section is superseded for persons appointed on or after the date that this act becomes effective as provided in section 1-366.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 17.—PUBLIC POSTSECONDARY EDUCATION
REORGANIZATION

Subchapter II.—University of the District of Columbia
Sec.
31-1714. Compensation of Trustees.
31-1716. Duties of Trustees.
31-1717. [Repealed.]
Subchapter III.—Authorizations
31-1721. Appropriations.

Subchapter IV.—Miscellaneous
Sec.
31-1731. Meetings of Trustees.
31-1735. Authority of Board of Education.

Subchapter II.—University of the District of Columbia

§ 31-1711. Establishment of Board of Trustees and University.

NOTES TO DECISIONS

Power to sue and be sued. — This section establishes the Board of Trustees of the University of the District of Columbia as a “body corporate,” having, inter alia, the power to sue and be sued. *Kelley v. Morris* (D.C. 1979, 400 A.2d 1045).

§ 31-1714. Compensation of Trustees.

Trustees shall receive compensation pursuant to the provisions of section 1-341.8, with a limit of four thousand dollars (\$4,000) per annum, while actually engaged in service as trustees. (Oct. 26, 1974, Pub. L. 93-471, title II, § 204, 88 Stat. 1426; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2292; Mar. 3, 1979, D.C. Law 2-139, § 3204 (f), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “receive” for “serve without,” “pursuant to the provisions of section 1-341.8” for “but may be reimbursed for their expenses, including per diem in lieu of subsistence, at the maximum rate equal to the daily equivalent provided for by grade 18 of the General Schedule established under section 5332 of title 5 of the United States Code,” “four thousand dollars (\$4,000)” for “\$4,000” and “as Trustees” for “for the Trustees.”
Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2(l) of the District of Columbia Government Comprehensive Merit Personnel Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 31-1716. Duties of Trustees.

It shall be the duty of the Trustees to —

* * * * *

(j) Select, appoint, and fix the compensation for a chief executive officer of the University and of such staff for the Board of Trustees as it deems necessary and approve the appointment and compensation of the academic and administrative heads of each of the components of the University and of such other officers as it deems necessary, including legal counsel, subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.). The chief executive officer shall serve at the pleasure of the Trustees.

(k) Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3204 (f), 25 DCR 5740.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3204 (f), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by adding “subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.)” at the end of the first sentence and by deleting the former second

sentence in subsection (j), and by repealing subsection (k).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 31-1717. Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3204 (f), 25 DCR 5740.

Legislative History of Law 2-139. See note to § 1-331.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter III.—Authorizations

§ 31-1721. Appropriations.

* * * * *

(b) Repealed. Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462.
(As amended Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462.)

Effect of Amendment.
1978 — Act Sept. 23, 1978, D.C. Law 2-111, amended section by repealing subsection (b).
Emergency Act Amendment.
1978 — For temporary repeal of subsection (b), see sec.

3 of the Official Purposes Funds Emergency Act of 1978 (D.C. Act 2-201, June 7, 1978, 25 DCR 390).
Legislative History of Law 2-111. See note to § 1-262a.

Subchapter IV.—Miscellaneous

§ 31-1731. Meetings of Trustees.

Meetings may be called by the Chairperson or a majority of the members of the Trustees. No official action may be taken by the Trustees except at a meeting of the Trustees at which a quorum is present. A total of eight (8) of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business, except a lesser number may hold hearings. Each meeting of the Trustees shall be open to the public and held in the District of Columbia with appropriate notice of each such meeting given to the general public, except a majority of the Trustees may elect to go into executive session to take action on personnel matters. The Trustees shall meet at stated times established by the Board of Trustees, but not less frequently than four times a year. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 401, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931; Mar. 3, 1979, D.C. Law 2-132, § 2, 25 DCR 3489.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-132, amended section by rewriting the third sentence.

Legislative History of Law 2-132. Law 2-132 was introduced in Council and assigned Bill No. 2-258, which was referred to the Committee on Education, Recreation

and Youth Affairs. The Bill was adopted on first and second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-279 and transmitted to both Houses of Congress for its review.

§ 31-1735. Authority of Board of Education.

* * * * *

(c) Repealed. Mar. 3, 1979, D.C. Law 2-139, § 3204 (b), 25 DCR 5740.
(As amended Mar. 3, 1979, D.C. Law 2-139, § 3204 (b), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by repealing subsection (c).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 19.—COMMISSION ON THE ARTS AND HUMANITIES

Sec.
31-1905. Administration.

§ 31-1905. Administration.

(a) There shall be an executive director for the Commission who shall be appointed by the Commission. The executive director shall be the chief administrative officer of the Commission and shall be responsible for supervising the remainder of the staff of the Commission. He shall report regularly to the Commission on his activities. The executive director shall receive annual compensation fixed in accordance with the provisions of subchapter XI of chapter 3A of title 1.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (s), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “the provisions of subchapter XI of chapter 3A of title 1” for “chapter 51 of Title 5, U.S. Code” in the last sentence of subsection (a).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 20.—EDUCATIONAL INSTITUTION
LICENSURE COMMISSION

Sec.
31-2004. Membership — Qualifications — Term of office — Vacancies — Officers — Meetings — Quorum — Compensation — Travel expenses.

Sec.
31-2005. Transfer of positions — Appointment and compensation of staff — Establishment of panels for inspection, evaluation, and recommendations.

§ 31-2003. Establishment of Commission.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the District of Columbia Emergency Educational Institution License Extension Act of 1978 (D.C. Act 2-175, April 13, 1978, 24 DCR 9291); sec. 2 of the District of Columbia Second Emergency Educational Institution License Extension Act of 1978 (D.C. 2-238, July 17, 1978, 25 DCR 1478); sec. 2 of the District of Columbia Emergency Educational Institution Licensure Regulations

Act of 1978 (D.C. Act 2-271, Aug. 21, 1978, 25 DCR 2541); and sec. 2 of the District of Columbia Emergency Educational Institution Licensure Regulations Extension Act of 1978 (D.C. Act 2-295, Oct. 17, 1978, 25 DCR 5090).
1979 — For temporary amendment of section, see sec. 2 of the District of Columbia First Emergency Educational Institution Licensure Regulations Act of 1979 (D.C. Act 3-7, Feb. 15, 1979, 25 DCR 8044).

§ 31-2004. Membership — Qualifications — Term of office — Vacancies — Officers — Meetings — Quorum — Compensation — Travel expenses.

* * * * *

(f) Members of the Commission shall each be entitled to compensation pursuant to the provisions of section 1-341.8, up to a maximum of four thousand dollars (\$4,000) for any one (1) year. While away from their homes or regular places of business in the performance of the duties of the Commission, members shall be allowed travel expenses, including per diem in lieu of substance.
(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (y), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section, in subsection (f), by substituting “compensation pursuant to the provisions of section 1-341.8” for “receive \$100 a day, prorated, for each day spent in conducting the business of the Commission” and “four thousand dollars (\$4,000) for any one (1) year” for “\$4000.00 for any year” in the first sentence, and by deleting “including the Chairperson of the Commission” following “members” and substituting “substance” for “subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section

5703 (b) of title 5, of the United States Code” in the second sentence.
Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2(l) of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 31-2005. Transfer of positions — Appointment and compensation of staff — Establishment of panels for inspection, evaluation, and recommendations.

* * * * *

(b) The Commission may appoint such personnel as it deems necessary. Compensation shall be fixed in accordance with the provisions of subchapter XI of chapter 3A of title 1, within the limits of funds available to the Commission, except that such positions shall be excepted.
(c) The Commission may set up panels of persons qualified to inspect, evaluate and make recommendations concerning the approval for licensure of the several kinds of institutions covered by this chapter.
(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (y), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “the provisions of subchapter XI of chapter 3A of title 1” for “the merit promotion system of the Federal Civil Service Commission, established under sections 5335 and 5336 of title 5 of the United States Code”

in the second sentence of subsection (b) and by deleting the former second sentence of subsection (c).
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 21.—LAW SCHOOL CLINICAL PROGRAMS FUNDING

- Sec.
- 31-2101. Findings.
- 31-2102. Program established.
- 31-2103. Administration of grants.

- Sec.
- 31-2104. Eligibility for funds.
- 31-2105. Prohibited use of funds.
- 31-2106. Appropriation.

§ 31-2101. Findings.

The Council of the District of Columbia finds that:
(a) There is a need for indigent litigants in the District of Columbia to be provided with free legal assistance in both criminal and civil cases.
(b) There is a need for law schools to sensitize law students to the legal problems and needs of indigent citizens through clinical education and training. By developing an awareness of the

legal needs of poor persons through participation in clinical programs, law students will be encouraged to continue their interest in representing indigent litigants as members of the Bar.

(c) At the present time, law school clinical programs provide free legal representation to indigent residents of the District of Columbia by having student attorneys available in court on a daily basis for appointment to cases in the Landlord and Tenant, the Small Claims, and the Criminal Misdemeanor Branches of the Superior Court of the District of Columbia.

(d) Substantial numbers of indigent litigants presently benefit from the representation which is made available by law school clinical programs. These persons might be forced to forego legal counsel if student attorneys were not made available by law school clinical programs.

(e) The sources of funds presently available to law school clinical programs are not sufficient to meet their financial needs.

(f) Without a continuing source of funding to sustain their activities there is a danger that the law school clinical programs which fulfill the needs found to exist by this chapter may cease to operate, thus posing a serious threat to the quality and availability of legal representation for indigent citizens in the Superior Court of the District of Columbia.

(Mar. 3, 1979, D.C. Law 2-143, § 2, 25 DCR 6114.)

Legislative History of Law 2-143. Law 2-143 was introduced in Council and assigned Bill No. 2-343, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 31, 1978 and November 14, 1978, respectively. Signed by the Mayor on December 14, 1978, it was assigned Act No.

2-313 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-143, provided: "That this act may be cited as the 'Law School Clinical Programs Funding Authorization Act of 1978.'"

§ 31-2102. Program established.

In consultation with the Joint Committee on Judicial Administration, the Mayor of the District of Columbia (hereinafter referred to as the "Mayor") shall establish and administer a program to disburse grant-fund assistance to eligible law school clinical programs in the District of Columbia in accordance with section 31-2104 and regulations promulgated by the Mayor. (Mar. 3, 1979, D.C. Law 2-143, § 3, 25 DCR 6114.)

Legislative History of Law 2-143. See note to § 31-2101.

§ 31-2103. Administration of grants.

The administration of all grants awarded under this chapter shall be the responsibility of the Mayor. (Mar. 3, 1979, D.C. Law 2-143, § 4, 25 DCR 6114.)

Legislative History of Law 2-143. See note to § 31-2101.

§ 31-2104. Eligibility for funds.

To be eligible for funds under this chapter, a law school clinical program must:

(a) be a program which provides legal representation by supervised law students to indigent litigants before the courts of the District of Columbia; and

(b) comply with all applicable court rules regulating student practice in the District of Columbia.

(Mar. 3, 1979, D.C. Law 2-143, § 5, 25 DCR 6114.)

Legislative History of Law 2-143. See note to § 31-2101.

Section referred to in section. 31-2102.

§ 31-2105. Prohibited use of funds.

No funds authorized under this chapter shall be used to:

- (a) compensate any law student for legal services rendered to an indigent client in connection with his or her participation in an eligible law school clinical program;
- (b) furnish representation to litigants who are not indigent; and
- (c) furnish representation to litigants in matters which are fee generating.

(Mar. 3, 1979, D.C. Law 2-143, § 6, 25 DCR 6114.)

Legislative History of Law 2-143. See note to § 31-2101.

§ 31-2106. Appropriation.

(a) There are hereby authorized to be appropriated sufficient funds in each fiscal year commencing October 1, 1978, to meet the purposes of this chapter: Provided, however, that grant funds available to the District of Columbia may be expended to carry out the purposes of this chapter.

(b) The Mayor is authorized to accept grants, gifts, donations, bequests and services from any source to assist in carrying out the purposes of this chapter.

(c) The funds authorized to be appropriated for the purposes of this chapter shall be in addition to and not in lieu of or part of the funds authorized to be appropriated for the purposes of the District of Columbia Criminal Justice Act (D.C. Code, sec. 11-2601 et seq.). (Mar. 3, 1979, D.C. Law 2-143, § 7, 25 DCR 6114.)

Legislative History of Law 2-143. See note to § 31-2101.

CHAPTER 22.—IMMUNIZATION OF SCHOOL STUDENTS

| Sec. | Sec. |
|--|---|
| 31-2201. Definitions. | 31-2205. Limitation on attendance of student without certification — Immunization requiring series of treatments. |
| 31-2202. Certification of immunization required. | 31-2206. Exemption from certification. |
| 31-2203. Immunization standards — List of immunizations. | 31-2207. Immunization plan — Suspension of chapter. |
| 31-2204. Notification by school for student without certification. | 31-2208. Severability. |

§ 31-2201. Definitions.

For the purpose of this chapter:

(a) The term “admit” or the term “admission” means the official enrollment at any level by a school of a student that entitles the student to attend the school regularly, whether full-time or part-time, and to participate fully in all the activities established for a student of his or her age, educational level, or other appropriate classification.

(b) The term “certification of immunization” means written certification by a private physician, his or her representative, or the public health authorities that the student is immunized.

(c) The term “student” means any person who seeks admission to school, or for whom admission to school is sought by a parent or guardian, and who will not have attained the age of twenty-six (26) years by the start of the school term for which admission is sought.

(d) The term “immunized” or the term “immunization” means initial immunization and any boosters or reimmunization required to maintain immunization against diphtheria, poliomyelitis, tetanus, rubella, measles, and mumps in accordance with the immunization standards issued by the public health authorities pursuant to this chapter.

(e) The term “Mayor” means the Mayor of the District of Columbia.

(f) The term “public health authorities” means the official or officials of the Executive Branch of the government of the District of Columbia designated by the Mayor pursuant to this chapter.

(g) The term “responsible person” means, in the case of a student under eighteen (18) years of age, a parent or guardian of the student, but in the case of a student eighteen (18) years of age or older, the student himself or herself.

(h) The term “school” means (1) any public school through the twelfth (12th) grade operated under the authority of the Board of Education of the District of Columbia; (2) any private or parochial school that offers instruction at any level or grade from kindergarten through twelfth (12th); (3) any private or parochial nursery school or preschool, or any private or parochial day-care facility required to be licensed by the District of Columbia; and (4) any college or university created or incorporated by special act of Congress or the Council of the District of Columbia or required to be licensed by the District of Columbia.

(Sept. 28, 1979, D.C. Law 3-20, § 2, 26 DCR 380.)

Legislative History of Law 3-20. Law 3-20 was introduced in Council and assigned Bill No. 3-66, which was referred to the Committee on Human Resources. The Bill was adopted on first, amended first, and second readings on May 22, 1979, June 5, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was

assigned Act No. 3-64 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Sept. 28, 1979, D.C. Law 3-20, provided: “That this act may be cited as the ‘Immunization of School Students Act of 1979.’”

§ 31-2202. Certification of immunization required.

No student shall be admitted by a school unless the school has certification of immunization for that student, or unless the student is exempted pursuant to section 31-2206. (Sept. 28, 1979, D.C. Law 3-20, § 3, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

§ 31-2203. Immunization standards — List of immunizations.

The Mayor shall, by regulations, specify the immunization standards to be used for compliance with this chapter, and may also, by regulation, revise the list of requested immunizations. (Sept. 28, 1979, D.C. Law 3-20, § 4, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

§ 31-2204. Notification by school for student without certification.

With respect to any student for whom a school does not have certification of immunization, the school shall notify a responsible person (a) that it has no certification of immunization for the student; (b) that it may not admit the student without certification (unless the student is exempted on medical or religious grounds pursuant to section 31-2206); (c) that the student may be immunized and receive certification by a private physician or the public health authorities; and (d) how to contact the public health authorities to learn where and when they perform these services. Neither the District of Columbia nor any school or school official shall be liable in damages to any person for failure to comply with this section. (Sept. 28, 1979, D.C. Law 3-20, § 5, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

§ 31-2205. Limitation on attendance of student without certification — Immunization requiring series of treatments.

A school shall permit a student to attend for not more than ten (10) days while the school does not have certification of immunization for that student. If immunization requires a series of treatments that cannot be completed within the ten (10) days, the student shall be permitted to attend school while the treatments are continuing if, within the ten (10) days, the school receives written notification from whomever is administering it that the immunization is in progress. (Sept. 28, 1979, D.C. Law 3-20, § 6, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

§ 31-2206. Exemption from certification.

No certification of immunization shall be required for the admission to a school of a student (a) for whom the responsible person objects in good faith and in writing, to the chief official of the school, that immunization would violate his or her religious beliefs; or (b) for whom the school has written certification by a private physician, his or her representative, or the public health authorities that immunization is medically inadvisable. (Sept. 28, 1979, D.C. Law 3-20, § 7, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

Section referred to in sections. 31-2202, 31-2204.

§ 31-2207. Immunization plan — Suspension of chapter.

In order to implement the requirements of this chapter efficiently, the public health authorities may develop a plan under which immunization may be made available to students according to groups defined alphabetically, geographically, or by age or grade or otherwise, and upon application of the public health authorities or the Superintendent of Schools, the Mayor may suspend for no longer than one (1) year the application of this chapter to those groups of students to whom immunization under such a plan will not be made available soon enough to avoid barring them from admission to school. (Sept. 28, 1979, D.C. Law 3-20, § 8, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

§ 31-2208. Severability.

If any provision of this chapter or its application to any person or circumstance is held to be invalid, the remaining provisions and other applications shall not be affected. (Sept. 28, 1979, D.C. Law 3-20, § 10, 26 DCR 380.)

Legislative History of Law 3-20. See note to § 31-2201.

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL,
AND PENAL INSTITUTIONS

Cross references. For Criminal Justice Advisory Board,
see § 2-2501 et seq. For smoke detectors, see § 5-328 et
seq.

| Chap. | Sec. |
|---|---------|
| 3. Hospitals and Asylums — General Provisions | 32-301 |
| 3A. Certificate of Need Program | 32-341 |
| 3B. Medical Records | 32-361 |
| 4. St. Elizabeths Hospital | 32-401 |
| 6. Forest Haven | 32-601 |
| 7B. Placement of Children in Family Homes | 32-781 |
| 13. D.C. General Hospital Commission | 32-1301 |

CHAPTER 3—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.
32-334. Benefits in lieu of salary for certain workers in
District facilities.

§ 32-304. District of Columbia Council to make regulations.

New implementing regulations. Pursuant to this section the “D.C. Ambulatory Surgical Treatment Center Licensure Act” (Apr. 6, 1978, D.C. Law 2-66, 24 DCR 6836) was adopted. These regulations are scheduled to be published by the Mayor in a compilation of all current District of Columbia municipal regulations.

§ 32-334. Benefits in lieu of salary for certain workers in District facilities.

Notwithstanding any other provision of law, the Mayor of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the Council of the District of Columbia, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Mayor to work in facilities of the government of the District of Columbia for the purposes of securing training and experience in their future vocations. (Oct. 26, 1973, Pub. L. 93-140, § 7, 87 Stat. 505; Mar. 3, 1979, D.C. Law 2-139, § 3205(dd), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence.
Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 3A.—CERTIFICATE OF NEED PROGRAM

Sec.
32-341. Purpose.
32-342. Definitions.
32-343. Certificate of need requirement.
32-344. Adoption of procedures and criteria by the State Agency governing applications and review.
32-345. Reconsideration procedures.
32-346. Criteria for review.
32-347. Emergency issuance of certificate of need.
32-348. Duration, modification, sale or transfer of a certificate of need.

Sec.
32-349. Administrative appeal.
32-350. Judicial review of certificate of need.
32-351. Certificate of need mandatory condition precedent.
32-352. Penalties for non-compliance with chapter.
32-353. Immunity from legal liability.
32-354. Moratorium on applications.
32-355. Severability clause.

§ 32-341. Purpose.

It is the purpose of this chapter to promote effective and equitable health planning and regulation of new institutional health services proposed to be offered or developed within the District of Columbia. (Feb. 28, 1978, D.C. Law 2-43, § 2, 24 DCR 3727.)

Legislative History of Law 2-43. Law 2-43 was introduced in Council and assigned Bill No. 2-54, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977 respectively. Signed by the Mayor

on November 4, 1977, it was assigned Act No. 2-100 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Feb. 28, 1978, D.C. Law 2-43, provided "That this act may be cited as the 'District of Columbia Certificate of Need Act of 1977.'"

§ 32-342. Definitions.

Except as otherwise indicated in a particular section, the following terms have the following meanings:

(a) The term "ambulatory surgical treatment facility" means any institution, place or building, not part of a hospital, devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures on an outpatient basis.

(b) The term "Annual Implementation Plan" means the plan established by the State Agency to describe the objectives which will achieve the goals of the Health Systems Plan and priorities among the objectives reviewed by the Statewide Health Coordinating Council pursuant to section 1513 (b) (3) of P.L. 93-641.

(c) The term "consumer" means an individual who does not hold any of the interests, positions, or characteristics of a direct or indirect provider of health care.

(d) The term "Corporation Counsel" means the Corporation Counsel of the District of Columbia government or his or her designated agent.

(e) The term "to develop", when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new health service or the incurring of a financial obligation in excess of one hundred and fifty thousand dollars (\$150,000) in relation to the offering of such a service.

(f) The term "diagnostic health care facility" means a facility, not operated by a hospital, which provides diagnostic services to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice, but does include diagnostic equipment for those offices costing more than one hundred and fifty thousand dollars (\$150,000).

(g) The term "District" means the District of Columbia.

(h) The term "general hospital" has the meaning ascribed to that term in section 104 of Chapter 4 of Title 8 of the District of Columbia Health Regulations.

(i) The term "health care facility" means a general hospital, psychiatric hospital, other specialty hospital, skilled nursing facility, kidney disease treatment center (including freestanding hemodialysis unit), intermediate care facility, ambulatory surgical treatment facility, and a diagnostic health care facility, but does not include Christian Science sanatoriums operated, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, or those private office facilities for the private practice of a physician, dentist, or other health care professional, except as related to capital expenditures in excess of one hundred and fifty thousand dollars (\$150,000) as provided in subsections (p) (1) and (p) (2) of this section.

(j) The term "health maintenance organization" means a public or private organization which:

(1) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physicians' services; hospitalization; laboratory, X-ray, emergency and preventive services; and out-of-area coverage;

(2) is compensated (except for co-payments) for the provision of the basic health care services listed in subsection (a) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) provides physicians' services primarily:

(A) directly through physicians who are either employees or partners of such organization, or

(B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(k) The term "health services" means clinically related (i.e., diagnostic, curative or rehabilitative) services, and includes alcohol, drug abuse, mental health, and home health care services.

(l) The term "Health Systems Agency" means a conditionally or fully designated health systems agency designated pursuant to section 1515 of P.L. 93-641.

(m) The term "intermediate care facility" has the meaning ascribed to that term in section 3 of Title I of the "Health Care Facilities Regulation", enacted June 14, 1974 (Reg. No. 74-15);

(n) The term "kidney disease treatment center" means a facility, not operated by a hospital, which is primarily engaged in the provision of diagnostic and treatment services, by or under the supervision of a physician, to persons suffering from kidney disease.

(o) The term "Mayor" means the holder of the Office of the Mayor of the District of Columbia pursuant to section 1-161 or the Mayor's designated agent.

(p) The term "new institutional health services" shall include:

(1) the construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) any expenditure in excess of one hundred and fifty thousand dollars (\$150,000) by any person engaged in the provision of health services which affects the unit cost of or charge for the provision of any health service or affects the amount of utilization of any health service, and which, under generally accepted accounting principles consistently applied, is a capital expenditure. If a person makes an acquisition under a lease or a comparable arrangement, or through a donation, which would have required a review if the acquisition had been by purchase, the acquisition shall be deemed a capital expenditure subject to review;

(3) a change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds, or distributes beds among various categories, or relocates such beds from one physical facility or site to another;

(4) health services which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve (12) month period prior to the time such services would be offered.

(q) The term "to offer", when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(r) The term "other specialty hospital" means an institution primarily engaged in providing to inpatients diagnosis and treatment for the limited category of illness(es) for which the institution is or will seek to be licensed. The term does not include a psychiatric hospital.

(s) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), the District government, or a political subdivision or instrumentality (including a municipal corporation) of the District government.

(t) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(u) The term "P.L. 93-641" means the "National Health Planning and Resources Development Act of 1974", approved January 4, 1975 (88 Stat. 2225), and any successor legislation.

(v) The term "skilled care facility" has the meaning ascribed to that term in section 3 of Title I of the "Health Care Facilities Regulation", enacted June 14, 1974 (Reg. No. 74-15).

(w) The term "State Agency" means the agency of the District government selected by the Mayor and designated in an agreement entered into pursuant to section 1521 of P.L. 93-641 to carry out the District's health planning and development program.

(x) The term "Statewide Health Coordinating Council" or "SHCC" means the body established pursuant to section 1524 of P.L. 93-641 to advise the State Agency.

(y) The term "State Health Plan" means that Health Systems Plan prepared by the State Agency and reviewed by the SHCC in accordance with sections 1513 (b) (2), 1523 (a) (2) and 1524 (c) (2) of P.L. 93-641. For the purposes of this subsection, the term "Health Systems Plan" means a detailed statement of goals (1) describing a healthful environment and health systems in the District which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care at a reasonable cost for all residents of the District; (2) which are responsive to the unique needs and resources of the District; and (3) which take into account and are consistent with the national guidelines for health planning policy, in the areas of supply, distribution and organization of health resources and services, issued by the Secretary of Health, Education and Welfare under section 1501 of P.L. 93-641.

(z) The term "State Medical Facilities Plan" means that plan prepared by the State Agency, reviewed and approved by the SHCC and submitted to the Secretary of Health, Education and Welfare for his or her approval in accordance with sections 1602 and 1603 of P.L. 93-641. (Feb. 28, 1978, D.C. Law 2-43, § 3, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-343. Certificate of need requirement.

All persons proposing to offer or develop a new institutional health service in the District shall, prior to proceeding with that offering or development, obtain from the State Agency a certificate of need indicating that there exists a public need for such new service. No expenditures in excess of one hundred and fifty thousand dollars (\$150,000) in preparation for this offering or development of a new institutional health service shall be made by any person unless a certificate of need for such service has been granted: Provided, that nothing in this section shall preclude the District government from granting a certificate of need which permits expenditures only for predevelopment activities such as surveys, studies and plans, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering or development of a new institutional health service shall include expenditures for studies, surveys, designs, plans, working drawings, specifications and site acquisition which are essential to the offering or development of the service. (Feb. 28, 1978, D.C. Law 2-43, § 4, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in sections. 32-344, 32-352.

§ 32-344. Adoption of procedures and criteria by the State Agency governing applications and review.

(a) All applications for a certificate of need issued under section 32-343 shall be reviewed by the State Agency. In order to carry out this function the State Agency shall adopt and revise as necessary review procedures consistent with subsection (f) of this section and criteria consistent with section 32-346. Such procedures and criteria shall be adopted prior to the review by the State Agency of new institutional health services and not later than three (3) months after the effective date of this chapter.

(b) Before adopting the review procedures and criteria required by this section or any revisions of such procedures and criteria, the State Agency shall hold a public hearing and give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(c) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to District health agencies and organizations in the District, the Statewide Health Coordinating Council, Health Systems Agencies and State Agencies in contiguous jurisdictions.

(d) The State Agency shall publish, in at least two (2) newspapers of general circulation in the District, a notice stating that review procedures and criteria or a revision thereof has been proposed for adoption and is available at specified addresses for inspection and copying by interested persons and stating the time and place of the hearing. The notice shall appear in other than the legal notices or classified advertisement sections of such newspapers.

(e) The State Agency shall distribute copies of its adopted review procedures and criteria and any revision thereof, within thirty (30) days of adoption, to the agencies and organizations specified in subsection (c) of this section, and shall provide copies to other persons upon request.

(f) The State Agency shall include in the procedures at least the following:

(1) A requirement that persons contemplating projects for new health institutional services which may require a certificate of need issued under section 32-343 shall at the earliest possible time in the course of their own planning submit to the State Agency a letter of intent in such detail as may be necessary to inform the State Agency of the scope and nature of the project. The letter of intent shall be submitted no later than sixty (60) days prior to filing the application for a certificate of need, unless permission to reduce such time is allowed for good cause shown. The State Agency may utilize the period of time prior to receiving a formal application for a certificate of need to answer inquiries concerning the requirements for a certificate of need and other reviews, to advise the applicant on appropriate joint planning with other health care institutional facilities and affected parties, and to advise on the involvement of other community and public agencies, providers and consumers in the long and short range planning of the applicant.

(2) An application for a certificate of need shall be in writing and on such forms and containing such information as the State Agency shall require. Upon receipt of the application, the State Agency has fifteen (15) days within which to determine whether the application is complete and in which to request further information from the applicant. If further information is requested, the State Agency shall notify the applicant when it is satisfied that the application is complete, but in no case in more than fifteen (15) days after the receipt of such information. The date the application is established as complete marks the beginning of the review period.

(3) Written notification of the beginning of the review period shall be sent to affected persons by mail within five (5) days of the beginning of the review period and shall also be published in the District of Columbia Register. For the purposes of this section, "affected person" includes, at a minimum, the person whose proposal is being reviewed, health care facilities and health maintenance organizations located in the District which provide institutional health services, health systems agencies serving health systems in contiguous jurisdictions areas, any agency which establishes rates for health care facilities or health maintenance organizations in the District, the State Health Coordinating Council, and members of the public who are to be served by the proposed new institutional health services. In the case of members of the public, the written notification requirement can be met by publication of the notice in at least one (1) newspaper of general circulation in the District.

(4) State Agency review shall take no longer than ninety (90) days from the beginning of the review period. When no decision is made within that time, the application shall be considered denied.

(5) The State Agency shall afford an opportunity for a public hearing to any affected person, if so requested in writing not later than fourteen (14) days after the postmark on the notice to that person of the beginning of the review period. A record of the hearing shall be made by the State Agency. Any party may request that a verbatim record be made, but may be required to pay the expense of recording and producing such verbatim record.

(6) The general public shall have access to all applications reviewed by the State Agency and all other written materials pertinent to the State Agency's review.

(7) All State Agency meetings shall be open to the public.

(8) The decision shall be in writing and shall contain findings and conclusions related to the criteria for review of such application. The recommendations of the State Health Coordinating Council shall be included in the decision document. Where the State Agency's decision is not in agreement with the recommendations of the SHCC, the State Agency shall provide a written justification for its disagreement.

(9) The State Agency may attach conditions to the approval of a certificate of need, as long as the conditions relate directly to the review criteria established under this section or federal regulations issued under P.L. 93-641.

(10) The State Agency shall forward to the SHCC a copy of any completed application for a certificate of need. The SHCC shall have up to sixty (60) days to review and comment on the application. During this period, the SHCC may hold a public hearing on the application if it deems appropriate. The failure of the SHCC to submit its recommendations shall not delay the State Agency from performing its review.

(Feb. 28, 1978, D.C. Law 2-43, § 5, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

Section referred to in sections. 32-346, 32-349.

§ 32-345. Reconsideration procedures.

(a) After a decision on an application for a certificate of need is made by the State Agency but before the issuance or denial of the certificate of need, the State Agency shall notify the applicant and all previously appearing parties and contiguous Health Systems Agencies and State Agencies of the decision. Either of them or any other person, for good cause shown, shall be given the opportunity within thirty (30) days to request reconsideration of the decision at a public hearing before the State Agency. If such a public hearing is requested, it shall be held within thirty (30) days of the request for a reconsideration of the decision. The person requesting the hearing and any other person may submit testimony at the hearing orally or in writing. However, the State Agency may limit the scope of the hearing so that no new evidence is adduced except as to subsequent occurrences or data not available earlier. A record of the public hearing shall be made by the State Agency. The applicant or any party may request a verbatim record, but may be required to pay the expense of recording and producing the verbatim record.

(b) For the purposes of subsection (a) of this section there shall be deemed to be "good cause shown" if the request for a public hearing:

(1) presents significant, relevant information not previously considered by the State Agency; or

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision; or

(3) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision.

(c) The State Agency may affirm, modify or reverse its decision, making such amendments or changes in the findings and conclusions as are appropriate and rendering its final decision within fourteen (14) days of the conclusion of the public hearing and, unless an appeal of such decision is made in accordance with the provisions of section 32-349 or section 32-350, the certificate of need shall be issued or denied forthwith. (Feb. 28, 1978, D.C. Law 2-43, § 6, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-346. Criteria for review.

(a) *Required findings upon review.* — The State Agency shall adopt in a manner consistent with section 32-344 specific criteria for conducting the review of an application for a certificate of need, which criteria shall include a written finding of at least the following:

(1) that the proposal conforms to the applicable Annual Implementation Plan, State Health Plan, and State Medical Facilities Plan;

(2) that any facility proposing a new institutional health service, which gave assurances pursuant to section 603 (e) or section 1602 (5) of the "Public Health Service Act", approved July 1, 1944 (58 Stat. 682) that its facilities would be made available to all persons residing in its area and that a reasonable volume of services would be made available to persons unable to pay therefor, is currently in compliance with such assurances;

(3) that less costly, more efficient or more appropriate alternative means of providing the services, including sharing arrangements, are not available and the development of such alternatives has been studied and found not practicable;

(4) that existing services similar to those proposed are being used in an appropriate and efficient manner; and

(5) that patients will experience serious problems in terms of cost, availability or accessibility in obtaining services of the type proposed in the absence of the proposed new service.

(b) *Considerations upon review.* — The State Agency shall adopt criteria, in addition to those listed in subsection (a) of this section, for the review of an application for a certificate of need. The criteria shall require the consideration of at least the following:

(1) the relationship of the service being reviewed to the long-range development plan, if any, of the person providing or proposing the service;

(2) the need of the population served or to be served for the services being reviewed;

(3) the immediate and long-term financial feasibility of the proposal;

(4) the availability or the potential availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the service proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(5) the relationship, including the organization relationship, of the health services proposed to be provided to ancillary or support services;

(6) the special needs and circumstances of those entities which provide a substantial part of their services or resources or both to individuals not residing in the District or which serve special populations within the metropolitan area. Such institutions may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(7) the special needs and circumstances of health maintenance organizations and other comprehensive health care programs;

(8) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision and the probable impact of the project reviewed on the costs of providing health services by the applicant.

(c) *Inpatient facilities — Other criteria for review.* — The criteria adopted for a review in accordance with paragraphs (a) and (b) of this section may vary according to the type of service being reviewed if the State Agency has previously promulgated and adopted standards for such a procedure: Provided, that the following findings will be required with respect to inpatient facilities:

(1) that less costly, more efficient or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable;

(2) that existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner;

(3) that in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and if found to be economically feasible have been implemented to the maximum extent possible;

(4) that patients will experience serious problems in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the District responsible for the provision and financing of long-term care (including home health) services.

(Feb. 28, 1978, D.C. Law 2-43, § 7, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.
Section referred to in section. 32-344.

§ 32-347. Emergency issuance of certificate of need.

Notwithstanding any other provision of this chapter, if the need for an emergency replacement occurs, the certificate of need application process may be suspended and an emergency certificate of need issued forthwith. Emergency replacement means the replacement of facilities or equipment whose lack poses an immediate threat to the health or safety of the patients who would be served. (Feb. 28, 1978, D.C. Law 2-43, § 8, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-348. Duration, modification, sale or transfer of a certificate of need.

(a) The State Agency shall issue a certificate of need valid for one (1) year, renewable for additional one (1) year periods after a showing of substantial progress or a justification for the lack of progress. The State Agency shall adopt regulations to define the schedule of performance, including reporting thereof, criteria for evaluating compliance or non-compliance to the schedule and criteria for determining major modifications after a certificate of need has been issued.

(b) A certificate of need obtained prior to the effective date of this chapter shall be valid for one (1) year from the effective date of this chapter or the period specified in granting the certificate, whichever is shorter, and shall be renewed only after review in accordance with the regulations adopted pursuant to subsection (a) of this section.

(c) A certificate of need may not be sold or transferred. (Feb. 28, 1978, D.C. Law 2-43, § 9, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-349. Administrative appeal.

The decision of the State Agency on an application for a certificate of need and the record upon which such decision was made (for good cause shown and upon a written request of the SHCC, the applicant, or an affected person as defined in section 32-344 (f) (3)) may be appealed to the Board of Appeals and Review established under Org. Order No. 112, dated August 11, 1955. (Feb. 28, 1978, D.C. Law 2-43, § 10, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.
Section referred to in section. 32-345.

§ 32-350. Judicial review of certificate of need.

The final decision upon an application for a certificate of need under this chapter, after the exhaustion of all administrative remedies, shall be subject to judicial review by the District of Columbia Court of Appeals pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). (Feb. 28, 1978, D.C. Law 2-43, § 11, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.
Section referred to in section. 32-345.

§ 32-351. Certificate of need mandatory condition precedent.

The issuance of a certificate of need, if required under this chapter, shall be a condition precedent to the issuance of any license, permit, zoning approval or any other type of official approval by an agency or officer or employee of the District government which is, in addition, necessary for the project. This condition precedent shall be mandatory and any license, permit,

certificate of occupancy, zoning approval, or any other expression of approval obtained or issued in contravention of this section or chapter shall be void. (Feb. 28, 1978, D.C. Law 2-43, § 12, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-352. Penalties for non-compliance with chapter.

(a) It shall be unlawful for any person to proceed with any project which under this chapter would require a certificate of need without first acquiring a certificate of need.

(b) The Corporation Counsel may seek injunctive relief from a court of competent jurisdiction when he or she finds that a person is offering, developing or operating a service in violation of section 32-343.

(c) Any person violating this chapter by willful failure to obtain a certificate of need, willfully deviating from the provisions of a certificate of need, or beginning construction or providing services after the expiration of a certificate of need shall be subject to a criminal penalty of not less than one hundred dollars (\$100.00) and not more than two thousand and five hundred dollars (\$2,500.00). Each day of continuing violation shall constitute a separate offense. (Feb. 28, 1978, D.C. Law 2-43, § 13, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-353. Immunity from legal liability.

Any person, whether an employee or not, who, as a member of any board, governing body, committee or other part of any agency established or designated as a State Agency under this chapter who performs duties or activities in good faith in implementing this chapter on behalf of that agency and without malice toward any persons affected by that duty or activity shall be immune from any liability on account of that duty or activity for the payment of any form of damages or criminal penalty under the law of the District. (Feb. 28, 1978, D.C. Law 2-43, § 14, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-354. Moratorium on applications.

The State Agency may impose a moratorium for a defined period of time (not to exceed one hundred and twenty (120) days) on consideration of applications for certain kinds of services if:

(a) the State Agency needs additional time to develop appropriate criteria to assess the need for a new service; or

(b) the current State Health Plan finds the existing capacity to provide a certain service or services is adequate or excessive.

(Feb. 28, 1978, D.C. Law 2-43, § 15, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

§ 32-355. Severability clause.

If any provision of this chapter is held invalid for any reason the invalidity shall not affect the other provisions which can be given effect without the invalid provisions and to this end all the provisions of this chapter are declared severable. (Feb. 28, 1978, D.C. Law 2-43, § 16, 24 DCR 3727.)

Legislative History of Law 2-43. See note to § 32-341.

CHAPTER 3B.—MEDICAL RECORDS

| Sec. | Sec. |
|---|---|
| 32-361. Definitions. | 32-364. Confidentiality of identity in publications. |
| 32-362. Authority to transmit data, etc., to committees. | 32-365. Use of committee reports, etc., in judicial and administrative proceedings. |
| 32-363. Liability of committee members for actions taken. | |

§ 32-361. Definitions.

For the purposes of this chapter:

(a) The term “extended care facility” means a residential facility providing medical services consistent with accepted professional, therapeutic and medical care concepts and practices as well as current health programs and legislation. The term shall include and refer to the following levels of care:

(1) skilled care facilities, that is, facilities or distinct parts thereof primarily engaged in providing to in-patients continuous professional nursing coverage and health related services under the direct supervision of physicians. Skilled care facilities are solely limited to those facilities which provide twenty-four (24) hour professional nursing services and a complete program of health related and rehabilitative services under the direct supervision of a full-time medical director or principal physicians; and

(2) intermediate nursing care facilities, that is, facilities or distinct parts thereof primarily engaged in providing professional nursing services provided under the direction of a physician to individuals who do not have such an illness, disease, injury or other condition as to require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide. Services include both regular and continuous health related services.

(b) The term “medical staff committee” means a peer review committee of a hospital or extended care facility.

(c) The term “medical utilization review committee” means any committee of a hospital or extended care facility which reviews, on a sample or other basis, admissions to such hospital or facility, the duration of stays therein and the professional services furnished: (1) with respect to the medical necessity of the services; and (2) for the purpose of promoting the most efficient use of the services and facilities available in the hospital or extended care facility.

(d) The term “peer review committee” means any committee of a professional medical society or psychological association composed of persons engaged in the practice of medicine or psychology in the District of Columbia which reviews or receives and hears complaints with respect to the quality of medical or psychological services furnished by a person engaged in the practice of medicine or psychology in the District of Columbia.

(e) The term “primary health record” means the record of continuing care kept by a physician, psychologist, hospital or extended care facility regarding a patient which reflects the diagnostic and therapeutic services rendered by the physician, psychologist, hospital or extended care facility to the patient.

(f) The term “tissue review committee” means any committee of a hospital or extended care facility which conducts a continuous review of the results of surgical operations with respect to the removal of tissue or blood from patients in the hospital or extended care facility.

(Sept. 29, 1978, D.C. Law 2-112, § 2, 25 DCR 1471.)

Legislative History of Law 2-112. Law 2-112 was introduced in Council and assigned Bill No. 2-233, which was referred to the Committee on Human Resources and the Aging. The Bill was adopted on first, amended first, and second readings on May 30, 1978, June 13, 1978 and June 27, 1978, respectively. There being no action by the

Mayor, it was assigned Act No. 2-236 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 29, 1978, D.C. Law 2-112, provided “That this act may be cited as the ‘Medical Records Act of 1978.’ ”

§ 32-362. Authority to transmit data, etc., to committees.

(a) Any person in the District of Columbia may transmit, upon request and, if required by the provisions of section 14-307, with the consent of the patient, to any medical utilization review committee, peer review committee, tissue review committee or medical staff committee, operating in the District of Columbia, any report, note, record or other data or other information which such person properly has in his possession relating to the medical or psychological services provided to any person.

(b) No person who provides any report, note, record or other data or information pursuant to subsection (a) of this section shall be liable to any other person for damages or equitable relief by reason of his providing such report, note, record or other data or information unless the information provided was false and the person providing such information knew, or had reason to believe, that the information was false. (Sept. 29, 1978, D.C. Law 2-112, § 3, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-363. Liability of committee members for action taken.

No member of a medical utilization review committee, a peer review committee, a medical staff committee or a tissue review committee, operating in the District of Columbia, shall be liable to any other person for damages or equitable relief by reason of any action taken or recommendation made by the member or by the committee to which the member belongs, if the action taken was within the scope of the functions of the committee and if the committee member acted in the reasonable belief that his action was warranted by the facts known to him after reasonable effort to obtain the facts of the matter. (Sept. 29, 1978, D.C. Law 2-112, § 4, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-364. Confidentiality of identity in publications.

Any publication by any medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof. (Sept. 29, 1978, D.C. Law 2-112, § 5, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

§ 32-365. Use of committee reports, etc., in judicial and administrative proceedings.

(a) Absent a showing of extraordinary necessity, the minutes, analyses, preliminary and final findings and reports of a medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall not be subject to discovery or admissible into evidence in any civil or administrative proceeding. This qualified privilege does not extend to primary health records or to any oral or written statements submitted to or presented before a medical utilization review committee, peer review committee, medical staff committee or tissue review committee.

(b) This section shall not affect the right of any individual employed by or formerly employed by, working for or formerly working for or associated with or formerly associated with a hospital or extended care facility operating within the District of Columbia, a professional medical society or psychological association operating within the District of Columbia, a medical school engaged in research within the District of Columbia, a department, agency or instrumentality of the federal government operating within the District of Columbia or a department or agency of the District of Columbia government to admit into evidence or subject to discovery the minutes and reports of a medical utilization review committee, peer review committee, medical staff committee or tissue review committee for the limited purpose of adjudicating the

appropriateness of an adverse action affecting the employment, work or association or the termination of employment, work or association of such person by such institution. (Sept. 29, 1978, D.C. Law 2-112, § 6, 25 DCR 1471.)

Legislative History of Law 2-112. See note to § 32-361.

CHAPTER 4.—ST. ELIZABETHS HOSPITAL

§ 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia — Admission.

NOTES TO DECISIONS

Statutory responsibility to pay. — It is the District of Columbia's statutory responsibility to pay for the care and treatment of its residents who are mentally ill and indigent. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Recovery from District. — A hospital has no duty or right to try to recover costs of treatment from an indigent person committed by the court to its care; its financial relationship is solely with the District. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

§ 32-405. Admission of indigent insane of District of Columbia — "Indigent insane person" defined.

NOTES TO DECISIONS

Statutory responsibility to pay. — It is the District of Columbia's statutory responsibility to pay for the care and treatment of its residents who are mentally ill and indigent. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

Recovery from District. — A hospital has no duty or right to try to recover costs of treatment from an indigent person committed by the court to its care; its financial relationship is solely with the District. *District of Columbia v. Moxley* (1979, 471 F. Supp. 777).

CHAPTER 6.—FOREST HAVEN

Sec.

32-603 to 32-605. [Repealed.]

§§ 32-603 to 32-605. Repealed. Mar. 3, 1979, D. C. Law 2-137, § 604 (b), 25 DCR 5094.

Legislative History of Law 2-137. See note to § 6-1651.

CHAPTER 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

§ 32-781. Purpose of chapter.

NOTES TO DECISIONS

Application of chapter. — This chapter was intended to apply only to situations in which the District has an interest. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

A minimal or coincidental geographical contact alone is insufficient and a substantial additional nexus is required for the application of this chapter. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

District interest protected by chapter. — To protect the parental rights of natural mothers residing in the District is a District of Columbia government interest protected by this chapter. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

There is no entitlement to trial by jury under this chapter. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

§ 32-782. Child-placing agency — License.

NOTES TO DECISIONS

District interest protected by chapter. — To protect mothers within the District from being coerced, compelled, forced or pressured to feel constrained or obliged to yield up their infants whether by threats of violence, financial withdrawal, or derision, regardless of how oblique or veiled the pressure may be, is a District of Columbia government interest protected by this chapter. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

Intent of section. — This section is intended to prevent fly-by-night groups which might spring up, engage in

occasional unregulated placements, and utilize the District as a base for their operation. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

Persons excluded from this chapter are relatives within the third degree of the child, who place the child with a relative who is also within the third degree of the child. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

§ 32-785. Persons authorized to place children — Custody, control, supervision, and visitation by agency — Confidential records.

NOTES TO DECISIONS

Contact affecting protected District interest. — Some contact affecting a District of Columbia governmental interest which is protected by this chapter must be shown before this section becomes applicable. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

Substantial nexus required. — This section applies only to placements which have a substantial nexus with the District. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

§ 32-786. Agency vested with parental rights — Consent to adoption — Adoption petition — Parents' relinquishment of rights — Recordation.

NOTES TO DECISIONS

Keeping of record reflects District's interest. — This section connotes the District's interest in the stability of District families and the welfare of District children by

requiring that an official, albeit sealed, record to be kept of the placement of the District's children. *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

§ 32-788. Penalty for operation as child-placing agency without license — Jurisdiction.

NOTES TO DECISIONS

Cited in *Galison v. District of Columbia* (D.C. 1979, 402 A.2d 1263).

CHAPTER 13.—D.C. GENERAL HOSPITAL COMMISSION

Subchapter II.—D.C. General Hospital Commission

Sec.

32-1319. Compensation.

32-1320. Duties and powers.

Subchapter IV.—Hospital Finances

32-1343. Audits.

Subchapter V.—Miscellaneous Provisions

Sec.

32-1351. Purchasing.

Subchapter II.—D.C. General Hospital Commission

§ 32-1319. Compensation.

Members of the Commission shall be reimbursed for actual and necessary expenses, while actually engaged in services for the Commission, pursuant to the provisions of section 1-341.8, with a limit of four thousand dollars (\$4,000) per annum. (May 13, 1977, D.C. Law 1-134, title II, § 209, 24 DCR 406; Mar. 3, 1979, D.C. Law 2-139, § 3205(fff), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “pursuant to the provisions of section 1-341.8” for “including per diem at the maximum rate equal to the daily equivalent provided for by grade 18 of the General Schedule established under section 5332 of title 5 of the United States Code” and “four thousand dollars (\$4,000)” for “\$4,000.”

Emergency Act Amendment.
1979 — For temporary deletion of the amendment made by D.C. Law 2-139, see sec. 2 (l) of the District of Columbia

Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 32-1320. Duties and powers.

In addition to those powers conferred elsewhere in this chapter, the Commission is hereby charged with the duty to govern all affairs of D.C. General Hospital and shall have all powers necessary or convenient to carry out the purposes of this chapter including, but not limited to the following;

* * * * *

(8) To enter into negotiations and binding contracts to achieve any or all of its purposes, including arrangements for certain services to be provided by other hospitals if economy or sophistication of required service so dictate; Provided, that nothing in this section shall be construed to alter the contracting responsibilities of the Department of General Services with respect to capital construction projects.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

Effect of Amendment.
1978 — Act June 30, 1978, D.C. Law 2-89, amended section by striking “pursuant to council regulations” in paragraph (8).

Emergency Act Amendments.
1978 — For temporary amendment of paragraph (8), see sec. 2 of the District of Columbia General Hospital Commission Act Emergency Amendments of 1978 (D.C. Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act

Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430).
Legislative History of Law 2-89. Law 2-89 was introduced in Council and assigned Bill No. 2-208, which was referred to the Committee on Human Resources and the Aging. The Bill was adopted on first and second readings on March 21, 1978 and April 4, 1978, respectively. Signed by the Mayor on April 21, 1978, it was assigned Act No. 2-186 and transmitted to both Houses of Congress for its review.

Subchapter IV.—Hospital Finances

§ 32-1343. Audits.

(a) The Municipal Audit and Inspection Division of the Office of Budget and Management Systems shall audit any and all funds, under the control of the Department of Human Resources on September 30, 1977, which remain available for expenditure and are determined to be transferable to the D.C. General Hospital Fund in accordance with the provisions of this subchapter; and shall submit a report of the audit to the Mayor of the District of Columbia, the

Council of the District of Columbia and to the D.C. General Hospital Commission. In addition, the Municipal Audit and Inspection Division shall monitor and review the establishment of accounts for all assets of the D.C. General Hospital and shall determine that generally accepted accounting methods are used to establish and record the asset values in the D.C. General Hospital's accounts.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

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|---|--|
| Effect of Amendment. 1978 — Act June 30, 1978, D.C. Law 2-89, amended subsection (a) generally. | Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430). |
| Emergency Act Amendments. 1978 — For temporary amendment of subsection (a), see sec. 2 of the District of Columbia General Hospital Commission Act Emergency Amendments of 1978 (D.C. | Legislative History of Law 2-89. See note to § 32-1320. |

Subchapter V.—Miscellaneous Provisions

§ 32-1351. Purchasing.

- (a) No Commissioner, officer or employee designated to do purchasing for the Commission shall have any material interest, either directly or indirectly, in any contract for the purchase of supplies, materials, equipment or services.
- (b) The Commission shall develop standards for purchases of and contracts for supplies and services consistent with section 1-808. Emergency purchases shall be allowed subject to the approval of persons delegated to do so by the Commission, and a full written determination and finding of the circumstances necessitating such emergency purchase, along with the purchase documents, shall be immediately open to public inspection.

* * * * *

(As amended June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756.)

| | |
|---|---|
| Effect of Amendment. 1978 — Act June 30, 1978, D.C. Law 2-89, amended subsections (a) and (b) generally. | 1978 (D.C. Act 2-170, Mar. 31, 1978, 24 DCR 9262); and sec. 2 of the District of Columbia General Hospital Commission Act Second Emergency Amendments of 1978 (D.C. Act 2-226, July 10, 1978, 25 DCR 1430). |
| Emergency Act Amendments. 1978 — For temporary amendment of subsections (a) and (b), see sec. 2 of the District of Columbia General Hospital Commission Act Emergency Amendments of | Legislative History of Law 2-89. See note to § 32-1320. |

TITLE 33.—FOOD AND DRUGS

| Chap. | Sec. |
|---|--------|
| 4. Narcotic Drugs | 33-401 |
| 7. Regulation and Control of Certain Drugs Other than Narcotics | 33-701 |
| 8. Prescription Drug Price Information | 33-801 |

CHAPTER 4.—NARCOTIC DRUGS

| Sec. |
|---|
| 33-422. Enforcement — Employees of Board of Pharmacy — Salaries — Cost of forms. |

§ 33-401. Definitions.

NOTES TO DECISIONS

Cited in *Johnson v. United States* (D.C. 1979, 401 A.2d 985).

§ 33-402. Acts declared unlawful.

NOTES TO DECISIONS

- I. General Consideration.
- II. Elements and Proof of Offenses.
- III. Validity of Arrests, Searches and Seizures.

I. GENERAL CONSIDERATION.

Dual convictions erroneous. — Dual convictions for possession of heroin under this section and for possession of the same drug with intent to distribute under 21 U.S.C. § 841(a), even if followed by concurrent sentences, constitute error. *United States v. Dorsey* (1978, 591 F.2d 922).

II. ELEMENTS AND PROOF OF OFFENSES.

Knowing possession required. — The possession spoken of in this section must be a knowing possession. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

The evidence was sufficient to show knowing possession of marijuana where it was shown that both defendants lived at the address where the marijuana was found, that there were substantial amounts of marijuana involved and that it was all readily observable throughout the house. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

Possession may be either actual or constructive; that is, it is enough that an accused was knowingly in a position or had the right to exercise dominion and control over a drug, either directly or through others. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

To prove constructive possession of narcotics, the government must show that the defendant was in a position or had the right to exercise dominion and control over the drugs. *Stewart v. United States* (D.C. 1978, 395 A.2d 3).

Constructive possession may be jointly shared. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

And may be established by circumstantial evidence. — Constructive possession may be established by

circumstantial as well as direct evidence. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Possession evidenced by presence, proximity or association plus linkage to operation. — The presence of an accused on the premises, his proximity to the drug or his association with another person may establish a prima facie case of drug possession when colored by evidence linking the accused to an ongoing criminal operation of which that possession is a part. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Intent to distribute may be inferred from possession of drug-packaging paraphernalia or of a quantity of drugs larger than needed for personal use. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Intent to distribute personally is unnecessary as long as distribution by someone is the end purpose of the possession. *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Expert's testimony admissible despite lack of specific recall. — Where an expert witness's tests for heroin had been performed a year before trial and he did not specifically recall making them but was able to testify from his records as to their results, his lack of specific recall was not as critical as it might have been had his findings been based on subjective observation rather than on standard objective tests, so that at most his credibility with the jury was affected, but his testimony was admissible. *Lee v. United States* (D.C. 1978, 383 A.2d 360).

Differing evaluations of heroin quality affected weight of evidence only. — Where there was no evidence of tampering, the mere fact that two chemists reached different results in their qualitative analysis of heroin content went to the weight of the physical evidence, not to its admissibility. *Ford v. United States* (D.C. 1978, 396 A.2d 191).

III. VALIDITY OF ARRESTS, SEARCHES AND SEIZURES.

Subsection (b) applies in narrow situation in which a drug offense cannot for probable cause purposes be regarded as anything but a misdemeanor and the arresting officer has not personally observed the allegedly criminal behavior but acts on a reliable tip. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Subsection (b) does not preempt or detract from any other authority to arrest in drug cases but instead plugs what Congress considered a loophole in the law — that a police officer could not effect an arrest on misdemeanor drug charges unless he had personally observed commission of the offense. *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

The fact that the defendant was charged with a misdemeanor violation of subsection (a) did not preclude finding his arrest valid under § 23-581 (a) (1) (A). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Narrow applicability of subsection (c). — The evidentiary limitation of subsection (c) comes into play only when an arrest is effected under subsection (b). *United States v. Hamilton* (D.C. 1978, 390 A.2d 449).

Evidence sufficient. — *United States v. Staten* (1978, 581 F.2d 878, 189 U.S. App. D.C. 100).

Cited in *Smith v. United States* (D.C. 1979, 406 A.2d 1262); *Burgos v. United States* (D.C. 1979, 404 A.2d 532); *Logan v. United States* (D.C. 1979, 402 A.2d 822); *Duddles v. United States* (D.C. 1979, 399 A.2d 59); *United States v. Hawkins* (1978, 595 F.2d 751, U.S. App. D.C.); *United States v. Foster* (1978, 584 F.2d 997, 190 U.S. App. D.C. 16); *United States v. Hall* (1977, 571 F.2d 649, 187 U.S. App. D.C. 215); *United States v. Dixon* (1978, 446 F. Supp. 58); *Schwasta v. United States* (D.C. 1978, 392 A.2d 1071); *Jones v. United States* (D.C. 1978, 391 A.2d 1188).

§ 33-422. Enforcement — Employees of Board of Pharmacy — Salaries — Cost of forms.

It is hereby made the duty of the major and superintendent of police of the District of Columbia to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States relating to narcotic drugs.

The Commissioner of the District of Columbia is authorized to employ such personal services for the clerical work of the Board of Pharmacy as may be necessary to carry out the provisions of this chapter and to provide for the expenses of said board, including the cost of preparation and distribution of such official order forms as may be provided by the regulations of the Board of Pharmacy. The Commissioner of the District of Columbia shall include in his annual estimates such amounts as may be required for the salaries and expenses herein authorized. (June 20, 1938, 52 Stat. 796, ch. 532, § 22; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(ee), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence in the second paragraph.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33-701. Definitions.

NOTES TO DECISIONS

Council need not specify attributes of dangerousness. — Where the Council specifically found that a drug was “dangerous” within the meaning of subdivision (1) (C), that reference necessarily incorporated the specific attributes of dangerousness enumerated in subdivision (1) (C), and an explicit statement as to which attribute marked the drug

in question was not required. *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

Ritalin properly included as dangerous. — The District of Columbia could properly include Ritalin as a dangerous drug under this section. *Johnson v. United States* (D.C. 1979, 401 A.2d 985).

§ 33-702. Prohibited acts.

NOTES TO DECISIONS

Evidence sufficient. — *United States v. Foster* (1978, 584 F.2d 997, 190 U.S. App. D.C. 16).

Cited in *Smith v. United States* (D.C. 1979, 406 A.2d 1262); *Finnegan v. United States* (D.C. 1979, 399 A.2d 570); *United States v. Dixon* (1978, 446 F. Supp. 58); *Rutledge v.*

United States (D.C. 1978, 392 A.2d 1062); *United States v. Speed* (D.C. 1978, 388 A.2d 892); *In re J.G.J.* (D.C. 1978, 388 A.2d 472); *United States v. Davis* (D.C. 1978, 387 A.2d 1091); *United States v. Lowery* (D.C. 1977, 382 A.2d 1007).

CHAPTER 8.—PRESCRIPTION DRUG PRICE INFORMATION

Subchapter II.—Prescription Drug Price Posting

§ 33-811. List of most commonly used prescription drugs.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 3 of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

§ 33-812. Posters listing most commonly used prescription drugs to be furnished pharmacies — Style — Information required.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 4 of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

§ 33-814. Quotation of cost of prescription drugs by pharmacies upon request required.

Emergency Act Amendment.

1978—For temporary amendment of section, see sec. 5 of the Drug Price Posting Emergency Act of 1978 (D.C. Act 2-211, June 27, 1978, 25 DCR 300).

TITLE 34.—HOTELS AND LODGING-HOUSES

Cross references. For smoke detector requirements, see § 5-328 et seq. For rental housing, see § 45-1681 et seq. For hotel occupancy tax, see § 47-3101 et seq.

TITLE 35.—INSURANCE

| Chap. | Sec. |
|---|---------|
| 3. Life Insurance — Definitions | 35-301 |
| 4. Department of Insurance with Respect to Life Companies | 35-401 |
| 5. Domestic Life Companies | 35-501 |
| 7. Provisions Relating to All Life Insurance Companies | 35-701 |
| 13. Fire, Casualty, and Marine Insurance | 35-1301 |
| 20. Newborn Health Insurance | 35-2001 |

CHAPTER 3.—LIFE INSURANCE—DEFINITIONS

§ 35-302. Definitions.

NOTES TO DECISIONS

“Insurance agent” and “solicitor” are not defined for District unemployment compensation purposes. *Gordon v. District Unemployment Comp. Bd.* (D.C. 1979, 402 A.2d 1251).

CHAPTER 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-414. False statements in application for insurance.

NOTES TO DECISIONS

“Material” construed. — A misrepresentation that influences an insurer to assume a risk which it otherwise would not have underwritten inevitably is material. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Misrepresentation material as matter of law. — Where an insurance applicant did not disclose her addiction to heroin and uncontradicted testimony established that had the truth been disclosed her application would have been rejected, the trial court correctly ruled that the misrepresentation was material as matter of law. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

Summary judgment in favor of insurer was proper because even if unintentional, misrepresentations as to the insured’s cirrhosis of the liver without doubt materially affected the hazard assumed by the company and its decision to accept the risk. *Blair v. Inter-Ocean Ins. Co.* (1978, 589 F.2d 730, 191 U.S. App. D.C. 207).

And court properly directed verdict for insurer. — Where insured failed to reveal that he was being treated for high blood pressure and the evidence established without contradiction that the company would not have issued the policy had it been apprised of his medical condition, misrepresentation was established as a matter of law and, there being no jury question, the trial court correctly directed a verdict for the insurance company. *Westhoven v. New England Mut. Life Ins. Co.* (D.C. 1978, 384 A.2d 36).

Evidence of misrepresentation supported judgment n.o.v. — Evidence that an insured had misrepresented her history of drug use was sufficient to support a judgment notwithstanding the verdict. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

There need be no causal relationship between misrepresented matter and death of insured where the misrepresentation would have affected the company’s acceptance of the risk or where it was made with intent to deceive. *Jones v. Prudential Ins. Co. of America* (D.C. 1978, 388 A.2d 476).

CHAPTER 5.—DOMESTIC LIFE COMPANIES

§ 35-501. Articles of incorporation.

NOTES TO DECISIONS

Cited in *Travelers Ins. Co. v. District of Columbia* (D.C. 1978, 382 A.2d 269).

§ 35-502. Filing articles of incorporation — Notice of intention to form company — Bond of incorporators.

NOTES TO DECISIONS

Cited in *Travelers Ins. Co. v. District of Columbia* (D.C. 1978, 382 A.2d 269).

CHAPTER 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

| | |
|---|---|
| Sec. | Sec. |
| 35-701. Superintendent to value policies — Legal standard of valuation. | 35-705b. Standard nonforfeiture law for life insurance. |
| 35-703. Standard provisions required in life insurance policies. | 35-705c. Standard nonforfeiture law for individual deferred annuities. |
| 35-705. Standard provisions required in annuities and pure endowment contracts. | 35-705d. Loan provisions in policies. |
| | 35-721. When actual premium for life policy is less than valuation net premium. |

§ 35-701. Superintendent to value policies — Legal standard of valuation.

* * * * *

(b) This subsection shall apply to only those policies and contracts issued prior to the operative date of section 35-705b (the standard nonforfeiture law).

The legal minimum standard for the valuation of life-insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Superintendent in the valuation of such contracts, and for life-insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½ per centum per annum: Provided, that any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½ per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with modified preliminary term method of valuation provided for herein.

Except as otherwise provided in paragraph (2) of subsection (c) for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at $3\frac{1}{2}$ per centum per annum: Provided, that any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

The Superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards.

Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 35-705b (the standard nonforfeiture law) except as otherwise provided in paragraph (2) of this subsection for group annuity and pure endowment contracts issued prior to such operative date.

(1) Except as otherwise provided in paragraph (2) of this subsection, the minimum standard for the valuation of all such policies and contracts shall be the Commissioner's reserve valuation methods defined in paragraphs (3) and (4) of this subsection and in section 35-721, $3\frac{1}{2}$ per centum interest per annum, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, $4\frac{1}{2}$ per centum interest per annum, and the following tables:

* * * * *

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of the next to the last paragraph of section 35-705b(d), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of the last paragraph of section 35-705b(d), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date: Provided, that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

* * * * *

(2) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the Commissioner's reserve valuation methods defined in paragraphs (3) and (4) of this subsection and the following tables and interest rates:

(i) For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any modification of this table approved by the Superintendent and $7\frac{1}{2}$ per centum interest per annum.

(ii) For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any modification of this table approved

by the Superintendent and $5\frac{1}{2}$ per centum interest per annum for single premium deferred annuity and pure endowment contracts and $4\frac{1}{2}$ per centum interest per annum for all other such individual annuity and pure endowment contracts.

(iii) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any modification of this table approved by the Superintendent and $7\frac{1}{2}$ per centum interest per annum.

After the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such company, provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1979.

(3) Except as otherwise provided in paragraph (4) of this subsection and in section 35-721, reserves according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioner's reserve valuation method for (i) life-insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code of 1954 (88 Stat. 959; 26 U.S.C. § 408), as now or hereafter amended, (iii) disability and accidental death benefits in all policies and contracts, and (iv) all other benefits, except life insurance and endowment benefits in life-insurance policies, and benefits provided by all other annuity and pure endowment contracts shall be calculated by a method consistent with the principles of this paragraph (3), except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(4) This paragraph shall apply to all annuity and pure endowment contracts except those group annuity and pure endowment contracts for which reserves are to be calculated by a method consistent with the principles of paragraph (3) of this subsection.

Reserves according to the Commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross

considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(5) In no event shall a company’s aggregate reserves for all life-insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in paragraph (3) of this subsection and section 35-721 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(6) Reserves for any category of policies, contracts, or benefits as established by the Superintendent, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(As amended Oct. 13, 1978, D.C. Law 2-120, §§ 2, 3, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by amending the fifth paragraph of subsection (b) and by amending subsection (c) generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see secs. 2 and 3 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. Law 2-120 was introduced in Council and assigned Bill No. 2-304, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-250 and transmitted to both Houses of Congress for its review.

§ 35-703. Standard provisions required in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

* * * * *

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the amount required by section 35-705d under the conditions specified thereby; and that the company will deduct from such loan value any indebtedness not already deducted in determining such value and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, § 4, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by striking “section 35-705c” and inserting in lieu thereof “section 35-705d” in subsection (6).
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec. 4

of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).
Legislative History of Law 2-120. See note to § 35-701.
Section referred to in section. 35-705d.

§ 35-705. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.

Except in the case of a reversionary annuity, otherwise called a "survivorship annuity," or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

* * * * *

Sixth. A provision specifying the options available in the event of cessation of payment of considerations under the contract. In the case of contracts issued on or after the operative date of section 35-705c (the standard nonforfeiture law for individual deferred annuities), such options shall be in accordance with section 35-705c. In the case of contracts issued prior to the operative date of section 35-705c, such option shall provide that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. For contracts issued prior to the operative date of section 35-705c, a company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, § 5, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by inserting the language immediately following the words "Sixth. A provision" in paragraph 9 and by striking "A company" in the last sentence of paragraph 9 and inserting in lieu thereof "For contracts issued prior to the operative date of section 35-705c, a company".

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 5 of the Second Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701.

§ 35-705b. Standard nonforfeiture law for life insurance.

* * * * *

(d) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy referred to in subsection (a) shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the

policy; (ii) 2 per centum of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) 40 per centum of the adjusted premium for the first policy year; (iv) 25 per centum of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed 4 per centum of the amount of insurance or uniform amount equivalent thereto.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: Provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii), and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the next succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: Provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding $3\frac{1}{2}$ per centum per annum, specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits: Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 per centum of the rates of mortality according to such applicable table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent.

In the case of ordinary policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, which rate of interest shall not exceed $3\frac{1}{2}$ per centum per annum except that a rate of interest not exceeding $5\frac{1}{2}$ per centum per annum may be used for policies issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978: Provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, that in calculating

the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1960, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-six. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-six.

In the case of industrial policies issued on or after the operative date of this paragraph as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values, if any, and paid-up nonforfeiture benefits, which rate of interest shall not exceed $3\frac{1}{2}$ per centum per annum except that a rate of interest not exceeding $5\frac{1}{2}$ per centum per annum may be used for policies issued on or after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978: Provided, that for any category of industrial insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: Provided further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Superintendent. After the effective date of the amendatory Act of 1962, any company may file with the Superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such company), this paragraph shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this paragraph for such company shall be January first, nineteen hundred and sixty-eight.

* * * * *

(As amended Oct. 13, 1978, D.C. Law 2-120, §§ 6 to 8, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section by amending the title of the section and by amending the fifth and sixth paragraphs of subsection (d) generally.

Emergency Act Amendment.

1978 — For temporary amendment of section, see secs. 6, 7 and 8 of the Second Standard Valuation and

Nonforfeiture Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701.

Section referred to in sections. 35-701, 35-705d.

§ 35-705c. Standard nonforfeiture law for individual deferred annuities.

(a) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts of individual retirement annuities under section 408 of the Internal Revenue Code of 1954 (88 Stat. 959; 26 U.S.C. § 408), as now or

hereafter amended, premium deposit fund, variable contract, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside the District of Columbia through an agent or other representative of the company issuing the contract.

(b) In the case of contracts issued on or after the operative date of this section as defined in subsection (k), no contract of annuity, except as stated in subsection (a), shall be delivered or issued for delivery in the District of Columbia unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Superintendent are at least as favorable to the contract holder.

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (d), (e), (f), (g), and (i).

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit as cash surrender benefit of such amount as is specified in subsections (d), (e), (g), and (i). The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(4) A brief and general statement of the method to be used in calculating any paid-up annuity, cash surrender or death benefits that may be available under the contract and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(c) The minimum values as specified in subsections (d), (e), (f), (g), and (i) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of 3 per centum per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(i) any prior withdrawals from or partial surrender of the contract accumulated at a rate of interest of 3 per centum per annum; and

(ii) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65 per centum of the net consideration for the first contract year and 87½ per centum of the

net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 per centum of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 per centum.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 per centum of the net consideration for the first contract year plus 22½ per centum of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(ii) The annual contract charge shall be the lesser of thirty dollars or 10 per centum of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90 per centum and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

(d) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(e) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(f) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of the paid-up annuity benefit be less than the minimum nonforfeiture amount at the time.

(g) For the purpose of determining the benefits calculated under subsections (e) and (f), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than

the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(h) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(i) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(j) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (d), (e), (f), (g), and (i), additional benefits payable: (1) in the event of total and permanent disability; (2) as reversionary annuity or deferred reversionary annuity benefits; or (3) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(k) After the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978, any company may file with the Superintendent a written notice of its election to comply with the provisions of this section after a specified date which is no more than two years after such effective date. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be two years after the effective date of the Standard Valuation and Nonforfeiture Amendments Emergency Act of 1978. (Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-120, redesignated former section 35-705c as section 35-705d.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 9 of the Second Standard Valuation and Nonforfeiture

Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).

Legislative History of Law 2-120. See note to § 35-701.

Section referred to in section. 35-705.

§ 35-705d. Loan provisions in policies.

(a) In the case of ordinary policies issued prior to the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the reserve at the end of the current policy year on the policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve). The policy may provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than 2½ per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein

that the deduction may be the said 2½ per centum or the one-fifth of the said reserve at the option of the company.

(b) In the case of ordinary policies issued on or after the operative date of section 35-705b (the standard nonforfeiture law) the loan value referred to in provision (6) of section 35-703 shall be the cash surrender value at the end of the current policy year as required by section 35-705b. The company shall reserve the right to defer such loan, except when made to pay premiums, for six months after application therefor is made. (June 19, 1934, ch. 672, Ch. V, § 5c, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4; Oct. 13, 1978, D.C. Law 2-120, § 9, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, redesignated section 35-705c as section 35-705d.

Legislative History of Law 2-120. See note to § 35-701. Section referred to in section. 35-703.

§ 35-721. When actual premium for life policy is less than valuation net premium.

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. (June 19, 1934, 48 Stat. 1176, ch. 672, Ch. V, § 20; Oct. 13, 1978, D.C. Law 2-120, § 10, 25 DCR 1519.)

Effect of Amendment.
1978 — Act Oct. 13, 1978, D.C. Law 2-120, amended section generally.
Emergency Act Amendment.
1978 — For temporary amendment of section, see sec. 10 of the Second Standard Valuation and Nonforfeiture

Amendments Emergency Act of 1978 (D.C. Act 2-282, Oct. 16, 1978, 25 DCR 3504).
Legislative History of Law 2-120. See note to § 35-701. Section referred to in section. 35-701.

CHAPTER 13.—FIRE, CASUALTY, AND MARINE INSURANCE

Subchapter I.—Fire, Casualty, and Marine Insurance, Generally

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| Sec. | | |
| 35-1308. | Receivership — Grounds for — Injunction — Hearing — Liquidation by Superintendent — Title to property — Notice to be recorded in office of recorder of deeds — Appointment and | compensation of clerks and special deputies — Expenses — Bond of receiver — Priorities of distribution of general assets — Proposal to disburse assets to District of Columbia Insurance Guaranty Association. |

Subchapter I.—Fire, Casualty, and Marine Insurance, Generally

§ 35-1308. Receivership — Grounds for — Injunction — Hearing — Liquidation by Superintendent — Title to property — Notice to be recorded in office of recorder of deeds — Appointment and compensation of clerks and special deputies — Expenses — Bond of receiver — Priorities of distribution of general assets — Proposal to disburse assets to District of Columbia Insurance Guaranty Association.

(a) The superintendent may, through the corporation counsel of the District, apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds \$50,000 for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

- (1) Insolvent; or
- (2) Has neglected or refused to observe a lawful order of the superintendent to make good any deficiency in its capital or surplus; or
- (3) Has by contract of reinsurance or otherwise transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other company, without having first obtained the written approval of the superintendent; or
- (4) Is found after an examination by the superintendent to be in such condition that its further transaction of business would be hazardous to its policyholders; or
- (5) Has violated its charter; or
- (6) Is carrying on activities against public policy.

Upon such application, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith, and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed, and that the company can properly resume the possession of its property, and the conduct of its business. If on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent, or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted. For the purpose of this section, the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents, and to employ clerks and assistants as may by him be deemed necessary. The fair and reasonable compensation of such special deputies, clerks, and assistants, and all the expenses of taking possession of and conducting the business of any such company shall, subject to the approval of the court, be paid out of the funds or assets of such company. The court may require a corporate surety bond or bonds from the superintendent in such amount as it may deem necessary.

(b) The priorities of distribution of the general assets of an insurer to be liquidated under the provisions of subsection (a) of this section shall be as follows:

- (1) expenses of administration;
- (2) compensation of employees, other than officers of the insurer, for services rendered within three (3) months prior to the commencement of a proceeding under subsection (a) of this section and not exceeding three hundred dollars (\$300) for each such employee;
- (3) claims for federal and local taxes which are secured by lien perfected prior to the commencement of delinquency proceedings;
- (4) claims by policyholders, beneficiaries and insureds, and liability claims against insureds which claims are arising from, within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of the District of Columbia Insurance Guaranty Association and any similar organization in any state;
- (5) all claims not falling within any other priority under this section including unsecured claims of the federal or of any state or local government;
- (6) claims of guarantee fund certificate holders, guarantee capital shareholders and surplus note holders; and
- (7) proprietary claims of shareholders, members or other owners.

(c)(1) within one hundred twenty (120) days of a final determination of insolvency and order of liquidation by a court of competent jurisdiction, the superintendent shall make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to the District of Columbia Insurance Guaranty Association and any similar organization in any state (hereinafter referred to as "Associations").

(2) Such proposal shall at least include provisions for: (A) reserving amounts for the payment of expenses of administration and claims falling within the priorities established in paragraphs (1), (2) and (3) of subsection (b) of this section; (B) disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available; (C) equitable allocation of disbursement to each of the Associations entitled thereto; (D) the securing by the receiver from each of the Associations entitled to disbursements pursuant to this subsection of an agreement to return to the superintendent such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in subsection (b) of this section in accordance with such priorities, and no bond shall be required of any such Associations; and (E) a full report to be made by the Associations to the superintendent accounting for all assets so disbursed to the Associations, all disbursements made therefrom, any interest earned by the Associations on such assets and any other matter as the court may direct.

(3) The superintendent's proposal shall provide for disbursements to the Associations in amounts at least equal to the payments made or to be made thereby for which such Associations could assert a claim against the receiver and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the Associations, disbursements shall be in the amount of available assets.

(4) Notice of such application shall be given by certified mail to the Associations in and to the Commissioners of Insurance of each of the states. Any such notice shall be deemed to have been given when deposited in a depository of the United States Postal Service, postage prepaid, at least thirty (30) days prior to submission of such application to the court.

(Oct. 9, 1940, 54 Stat. 1067, ch. 792, Ch. II, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, § 168(g), title I, 84 Stat. 589; Mar. 3, 1979, D.C. Law 2-123, § 2, 25 DCR 2006.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-123, amended section by designating the formerly undesignated introductory language as subsection (a), by redesignating former subsections (a), (b), (c), (d), (e) and (f) as present paragraphs (1), (2), (3), (4), (5) and (6) of subsection (a), and by adding present subsections (b) and (c).

Legislative History of Law 2-123. Law 2-123 was introduced in Council and assigned Bill No. 2-252, which

was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-254 and transmitted to both Houses of Congress for its review.

CHAPTER 20.—NEWBORN HEALTH INSURANCE

Sec.

35-2001. Required.

35-2002. Extent of coverage.

Sec.

35-2003. Notification of birth.

35-2004. Application of chapter.

§ 35-2001. Required.

All individual and group health insurance policies providing coverage on an expense incurred basis and individual and group service or indemnity type contracts issued by a nonprofit health service plan shall provide that health insurance benefits shall be payable with respect to a newly born child of the insured or subscriber from the moment of birth. (Oct. 20, 1979, D.C. Law 3-33, § 2, 26 DCR 1116.)

Legislative History of Law 3-33. Law 3-33 was introduced in Council and assigned Bill No. 3-12, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed by the Mayor on August 31, 1979, it

was assigned Act No. 3-99 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Oct. 20, 1979, D.C. Law 3-33, provided: "That this act may be cited as the 'Newborn Health Insurance Act of 1979.' "

§ 35-2002. Extent of coverage.

The coverage for newly born children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects, birth abnormalities and prematurity. (Oct. 20, 1979, D.C. Law 3-33, § 3, 26 DCR 1116.)

Legislative History of Law 3-33. See note to § 35-2001.

§ 35-2003. Notification of birth.

If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one (31) day period. (Oct. 20, 1979, D.C. Law 3-33, § 4, 26 DCR 1116.)

Legislative History of Law 3-33. See note to § 35-2001.

§ 35-2004. Application of chapter.

The requirements of this chapter shall apply: (a) to all insurance policies and subscriber contracts delivered or issued for delivery in the District more than one hundred twenty (120) days after the effective date of this chapter; (b) to all such insurance policies and subscriber contracts renewed, amended or reissued after one hundred twenty (120) days following the effective date of this chapter; and (c) to only children born more than one hundred twenty (120) days after the effective date of this chapter. (Oct. 20, 1979, D.C. Law 3-33, § 5, 26 DCR 1116.)

Legislative History of Law 3-33. See note to § 35-2001.

TITLE 36.—LABOR

| Chap. | Sec. |
|--|--------|
| 1A. Voluntary Apprentices | 36-121 |
| 4. Minimum Wages and Industrial Safety | 36-401 |
| 5. Workmen's Compensation | 36-501 |
| 7. Public Employment Service | 36-701 |
| 8. Employment Opportunities | 36-801 |
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CHAPTER 1A.—VOLUNTARY APPRENTICES

| Sec. | Sec. |
|--|--|
| 36-122. Apprenticeship Council — Membership — Term — Compensation. | 36-127.1. Registration of apprenticeship program required. |
| 36-127. "Apprentice" defined. | |

§ 36-122. Apprenticeship Council — Membership — Term — Compensation.

Without regard for any other provision of law with respect to the appointment of officers and employees of the United States or the District of Columbia, the Mayor of the District of Columbia shall appoint and the Council shall confirm an Apprenticeship Council, to be composed of eleven (11) members, as follows: three (3) representatives from employer organizations, three (3) representatives from employee organizations, and three (3) public representatives, who are not members of either employee or employer organizations, chosen to make the Apprenticeship Council better reflect the composition of the District of Columbia labor force, including women and minorities who are traditionally under-represented in the trades; and two (2) representatives of government, who shall be the Mayor of the District of Columbia and the Superintendent of Schools or their respective delegates. The terms of office of the members of the Apprenticeship Council first appointed by the Mayor shall expire as designated by the Mayor at the time of making the appointment: One (1) representative each of employers, employees and the public being appointed for one (1) year; one (1) representative each of employers, employees and the public appointed for two (2) years; and one (1) representative each of employers, employees and the public for three (3) years. Thereafter, each member shall be appointed for a term of three (3) years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term. The compensation of each member not otherwise compensated by public money shall be paid not more than twenty-five dollars (\$25) per day for each day spent in attendance at meetings of the Apprenticeship Council: Provided however, that any applicable laws passed by the Council of the District of Columbia shall supersede the provisions of this section. (May 21, 1946, 60 Stat. 204, ch. 267, § 2; Mar. 3, 1979, D.C. Law 2-139, § 3205 (ff), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-156, § 2, 25 DCR 6991.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former last sentence. Act Mar. 6, 1979, D.C. Law 2-156, amended section by substituting the present first two sentences for the former first three sentences, by inserting "(3)" in the third sentence, and by adding the present last sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Legislative History of Law 2-156. Law 2-156 was introduced in Council and assigned Bill No. 2-325, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and

second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-325 and transmitted to both Houses of Congress for its review.

Application of act. Section 3 of Act Mar. 6, 1979, D.C. Law 2-156, provided that the terms of members presently serving on the Apprenticeship Council shall not be affected by the act's amendment of this section.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 36-127. “Apprentice” defined.

The term “apprentice”, as used herein, shall mean a person at least sixteen years of age who has entered into a written agreement, hereinafter called an apprenticeship agreement, with an employer, an association of employers, or an organization of employees, which apprenticeship agreement provides for not less than two thousand hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects. (May 21, 1946, 60 Stat. 205, ch. 267, § 7; Mar. 6, 1979, D.C. Law 2-156, § 4, 25 DCR 6991.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-156, amended section by substituting “two” for “four.”

Legislative History of Law 2-156. See note to § 36-122.

§ 36-127.1. Registration of apprenticeship program required.

Ninety (90) days after the effective date of this section, all prime contractors and subcontractors who contract with the District of Columbia government to perform construction or renovation work with a single contract or cumulative contracts of at least \$500,000, let within a twelve (12) month period, shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council. (Mar. 6, 1979, D.C. Law 2-156, § 5, 25 DCR 6991.)

Legislative History of Law 2-156. See note to § 36-122.

CHAPTER 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY**Subchapter II.—Industrial Safety**

Sec.

36-437. Employment of Director of Industrial Safety — Duties.

*Subchapter II.—Industrial Safety***§ 36-431. Purpose of subchapter.****NOTES TO DECISIONS**

Basis for burden on employers. — The congressionally-established standard requiring employers to exercise due care for the prevention of all accidents which might thereby be avoided implicitly recognizes that

wage earners will not always exercise due care for their own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-432. Definitions.**NOTES TO DECISIONS**

“Safe” broadly defined. — The term “safe” as used in this subchapter has been defined broadly. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-433. Additional duties of Board under this subchapter.

NOTES TO DECISIONS

Safety regulations not limited by common law reasonableness standard. — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common law standard of “reasonableness” but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme

only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner’s choice was fully voluntary, (3) that the alternative afforded the safety mandated by statute, rule or regulation and (4) that the wage earner’s determination to encounter the risk was, under the circumstances, made with willful, wanton or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

§ 36-437. Employment of Director of Industrial Safety — Duties.

The Board is hereby authorized to employ a Director of Industrial Safety, who shall not be a member of the Board. The Director shall perform such duties as may be prescribed by the Board in administering the provisions of this subchapter. (Sept. 19, 1918, ch. 174, title II, § 7, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a); Mar. 3, 1979, D.C. Law 2-139, § 3205 (k), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “and whose compensation shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” at the end of the first sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 36-438. Employers’ duties — Furnish safe place of employment — Furnish required information — Report employees’ injury, death, or disease — Record of employees.

NOTES TO DECISIONS

Contributory negligence of wage earner does not bar recovery based upon his employer’s breach of the statutory duty to provide reasonably safe working conditions, and it is immaterial whether that duty derives from the general language of the statute or from the provisions of a rule or regulation adopted pursuant to § 36-433. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Defense of assumption of risk bars a claim based upon breach of a duty imposed by the statutory safety scheme only where the defendant proves (1) that there was available to the wage earner an alternative to encountering the risk, (2) that the wage earner’s choice was fully voluntary, (3) that the alternative afforded the

safety mandated by statute, rule or regulation and (4) that the wage earner’s determination to encounter the risk was, under the circumstances, made with willful, wanton or reckless disregard for his own safety. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

Safety regulations not limited by common law reasonableness standard. — Administratively imposed safety regulations which more specifically define the general duty to provide reasonably safe conditions of employment are not limited by the common law standard of “reasonableness” but rather are valid unless so unreasonable as to be void. *Martin v. George Hyman Constr. Co.* (D.C. 1978, 395 A.2d 63).

CHAPTER 5.—WORKMEN'S COMPENSATION

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

NOTES TO DECISIONS

Federal Act applicable. — The federal Longshoremen's and Harbor Workers' Compensation Act, including its amendments by Congress, is the workmen's compensation statute for the District. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

Traditional tort remedies excluded. — In return for the no-fault remedy given by this section, the workman gives up traditional tort remedies against his employer. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

This section limits the economic burden on employers by providing that their liability under the federal Act shall be "exclusive," depriving employees and their representatives of the right to pursue common-law tort suits, such as wrongful death actions, against their employers or co-workers if the injuries are covered by the federal Act. *Harrington v. Moss* (D.C. 1979, 407 A.2d 658).

Claims not covered. — There are two possible ways in which a claim could fall outside this section's coverage; it may fail to satisfy the definition of "injury" in the federal Act, or it may involve an injury occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another. *Harrington v. Moss* (D.C. 1979, 407 A.2d 658).

Employers subject to section. — Every employer in the District of Columbia is subject to this section. *Harrington v. Moss* (D.C. 1979, 407 A.2d 658).

General contractor not deemed "employer". — This section does not provide that the general contractor shall be deemed the "employer" of the subcontractor's employees. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

Duty on subcontractors imposed. — This section directly imposes the duty on subcontractors to carry compensation insurance. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

General contractor does not acquire immunity in tort under this section by obtaining compensation insurance if the subcontractor has also acquired coverage. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

Election of employee. — If the employer fails to secure compensation insurance as required by this section, the

injured employee has the election of either claiming compensation under the federal Act or maintaining a damage suit at law against the employer. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

Sufficient contacts with District to confer jurisdiction over claim. — Claimant who obtained employment through employment agency in District but worked and was injured at the National Airport in Virginia had sufficient contacts with the District to confer jurisdiction on the Benefits Review Board. *Pettus v. American Airlines* (1978, 587 F.2d 627).

Causal relationship not required. — This section does not require a causal relationship between the nature of the employment and the accident. *Harrington v. Moss* (D.C. 1979, 407 A.2d 658).

Defenses of employer excluded. — If an employee elects to sue at law under this section, the employer may not plead as a defense the fellow servant doctrine, assumption of risk, or contributory negligence. *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

Award precluded by res judicata and full faith and credit. — District of Columbia workmen's compensation award was precluded by rules of res judicata and full faith and credit where decision to terminate payments for refusal to submit to surgery had been made by the Virginia Industrial Commission after a full and fair adjudication under Virginia law, which was exclusive of all other proceedings. *Pettus v. American Airlines* (1978, 587 F.2d 627).

Adjustment to permanent total disability status permissible despite claimant's employment. — Adjustment of a claimant's status from permanent partial disability to permanent total disability was permissible despite the fact that the claimant was employed at the time, where the disability prevented him from any longer making the wages he was receiving when injured. *Haughton Elevator Co. v. Lewis* (1978, 572 F.2d 447).

Cited in Director, Office of Workers' Comp. Programs v. Potomac Elec. Power Co. (1979, 607 F.2d 1378, U.S. App. D.C.); *Ceco Corp. v. Maloney* (D.C. 1979, 404 A.2d 935).

§ 36-502. Exceptions.

NOTES TO DECISIONS

Cited in *DiNicola v. George Hyman Constr. Co.* (D.C. 1979, 407 A.2d 670).

§ 36-504. District employees — Transfer of functions with respect to processing claims.

Section referred to in section. 1-353.46.

CHAPTER 7.—PUBLIC EMPLOYMENT SERVICE

§ 36-701. Public employment service — Establishment by Mayor — Transfer of functions of existing employment service.

Emergency Act Amendment.

1979 — For temporary authorization of programs to provide employment for District of Columbia youth, see

sec. 2 of the Youth Employment Emergency Act of 1979 (D.C. Act 3-42, May 22, 1979, 25 DCR 10363).

Section referred to in section. 1-331.1.

CHAPTER 8.—EMPLOYMENT OPPORTUNITIES

Sec.

36-801. Declaration of purpose.

36-802. Definitions.

36-803. Establishment of a Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped.

Sec.

36-804. Duties and powers of the Committee.

36-805. Procurement requirements for District government.

§ 36-801. Declaration of purpose.

The purpose of this chapter is to further the policy of the District of Columbia to encourage and assist blind and other severely handicapped individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for blind and other severely handicapped products and services thereby enhancing their dignity and capacity for self-support.

Further, it is the purpose of this chapter to create employment opportunities for blind and other severely handicapped individuals which enhance training, evaluation, adjustment and open market employment for those persons who become sufficiently capable. (Mar. 3, 1979, D.C. Law 2-128, § 2, 25 DCR 2236.)

Legislative History of Law 2-128. Law 2-128 was introduced in Council and assigned Bill No. 2-151, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 1978 and July 25, 1978, respectively. Signed by the Mayor on August 17, 1978, it was assigned Act No. 2-263

and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-128, provided: "That this act may be cited as the 'Employment Opportunities Act of 1978'."

§ 36-802. Definitions.

For the purposes of this chapter:

(a) The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty (20) degrees.

(b) The term "direct labor" includes all work required for preparation, processing and packing but not supervision, administration, inspection and shipping.

(c) The term "qualified nonprofit agency for the blind and other severely handicapped" means an agency:

(1) organized under the laws of the United States or of the District of Columbia operated in the interest of blind individuals and other severely handicapped and the net income of which does not ensure, in whole or in part, to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard required by the laws of the United States or of the District of Columbia; and

(3) which in the manufacture of products and in the provision of service (whether or not the products or services are procured under this chapter) during the fiscal year employs blind and other severely handicapped individuals for not less than seventy-five per centum (75%) of the person-hours of direct labor required for the manufacture or provision of the products or services.

(d) The term "severely handicapped" means any person (other than a blind person as heretofore defined) who is so severely incapacitated by any physical or mental disability that he or she cannot engage in normal competitive employment because of such disability. (Mar. 3, 1979, D.C. Law 2-128, § 3, 25 DCR 2236.)

Legislative History of Law 2-128. See note to § 36-801.

§ 36-803. Establishment of a Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped.

(a) There is hereby created a Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped (hereinafter referred to as the "Committee") to be appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"). The Committee shall be composed of two (2) private citizens conversant with the problems incident to the employment of the blind and other severely handicapped, two (2) citizens representing individuals who are handicapped consumers employed in qualified nonprofit agencies for the blind and other severely handicapped, two (2) citizens representing the general public and a representative of each of the following agencies: Directors of the Department of General Services, the Office of Budget and Management Systems and the Department of Human Resources. The members of the Committee shall be appointed by the Mayor for a term of four (4) years and shall not serve beyond the expiration of their term: Except, that of the six (6) private citizen members first appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and two (2) shall be appointed for a term of four (4) years, as designated by the Mayor at the time of appointment. The members of the Committee shall designate one (1) of their number to be chairperson.

(b) Any private citizen member, appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed, shall be appointed only for the remainder of such term.

(c) Members of the Committee shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Committee.

(d) Subject to such rules as may be adopted by the Committee, the Mayor may appoint and fix the pay of any personnel which the Committee determines is necessary to assist it in carrying out its duties and powers under this chapter.

(e) The Committee may secure directly from any agency of the District of Columbia government (hereinafter referred to as "District government") information which the Committee deems necessary to carry out this chapter. Upon request of the chairperson of the Committee, the head of such agency shall furnish such information to the Committee.

(f) The Committee shall, not later than ninety (90) days following the close of each fiscal year, transmit to the Mayor and to the Council of the District of Columbia (hereinafter referred to as the "Council") a report which shall include: (1) the names of the Committee members serving in the preceding fiscal year; (2) the dates of Committee meetings in that year; (3) a description of its activities under this chapter in that year; (4) a list of contracts awarded under this chapter and the recipients thereof; and (5) any recommendations for changes in this chapter which it determines are necessary. (Mar. 3, 1979, D.C. Law 2-128, § 4, 25 DCR 2236.)

Legislative History of Law 2-128. See note to § 36-801.

§ 36-804. Duties and powers of the Committee.

(a) The duties of the Committee shall be as follows:

(1) to determine the price of all products manufactured and services provided by the blind and other severely handicapped and offered for sale to the various agencies of the District government by any qualified nonprofit agency for the blind and other severely handicapped. The price shall be set to recover the cost of raw materials for the workshops, labor, overhead and delivery costs, but shall not include profit;

(2) to revise such prices from time to time in accordance with changing cost factors; and

(3) to make such rules and regulations regarding specifications, time of delivery, authorization of a central nonprofit agency to facilitate the distribution of orders among agencies for the blind and other severely handicapped and other relevant matters of procedure as shall be necessary to carry out the purposes of this chapter.

(b) The Committee shall establish and publish a list of products produced by any qualified nonprofit agency for the blind and other severely handicapped and the services provided by any such agency which the Committee determines are suitable for procurement by agencies of the District government pursuant to this chapter. This procurement list and revisions thereof shall be distributed to all purchasing officers of the District government. (Mar. 3, 1979, D.C. Law 2-128, § 5, 25 DCR 2236.)

Legislative History of Law 2-128. See note to § 36-801.

§ 36-805. Procurement requirements for District government.

(a) If any agency of the District government intends to procure any product or service on the procurement list, that agency shall, in accordance with rules and regulations not contrary to the procurement laws and rules and regulations of the District of Columbia and of the Committee, procure such product or service, at the price established by the Committee, from a qualified nonprofit agency for the blind and other severely handicapped if the product or service is available within the period required by that agency and if the product meets the minimum quality standards required by the agency: Provided, that this chapter shall not apply in any cases where products or services are available for procurement from any agency of the District government and procurement therefrom is required under the provisions of any law in effect on the date of enactment of this chapter. These procurement actions shall not abrogate any existing contractual agreements for goods or services but shall only apply after the termination of existing contractual agreements.

(b) In furthering the purposes of this chapter and in contributing to the economy of the District government, it is the intent of the Council that there be close cooperation between the Committee and any agency of the District government from which procurement of products or services is required under the provisions of any law in effect on the date of enactment of this chapter. The Committee and any such agency of the District government are authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any agency of the District government. (Mar. 3, 1979, D.C. Law 2-128, § 6, 25 DCR 2236.)

Legislative History of Law 2-128. See note to § 36-801.

CHAPTER 9.—LIE DETECTORS

Sec.

36-901. Definitions.

36-902. Use of lie detectors prohibited — Exceptions.

36-903. Invasion of privacy — Contracts — Arbitration
decisions — Criminal penalties — Civil liability
— Alternative remedies.

§ 36-901. Definitions.

As used in this chapter, the term—

(a) “employee” means any natural person who performs any labor for compensation, in whole or in part, in the District of Columbia; but does not include:

(1) employees of any authority of the government of the United States other than the District of Columbia government;

(2) employees of any foreign government; or

(3) employees of any international organization defined in 22 U.S.C. § 288.

(b) "employer" means anyone who employs any natural person and who does business in the District of Columbia, but does not include any agency or authority of the federal government.

(c) "hiring procedure" means any procedure or action in the District of Columbia used to find, or to select for employment, any person seeking employment, whether the procedure is used by a prospective employer with all persons seeking employment, or is used only selectively with such persons.

(d) "lie detector test" means any polygraph, lie detector, or other test which by any mechanical, electrical, chemical, or physiological means attempts to determine whether a person is telling the truth, or the truth to the best of the person's knowledge.

(Mar. 6, 1979, D.C. Law 2-154, § 2, 25 DCR 6980.)

Legislative History of Law 2-154. Law 2-154 was introduced in Council and assigned Bill No. 2-225, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29,

1978, it was assigned Act No. 2-320 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 6, 1979, D.C. Law 2-154, provided: "That this act may be cited as the 'Prevention of the Administration of Lie Detection Procedures Act of 1978.'"

§ 36-902. Use of lie detectors prohibited — Exceptions.

(a) No employer or prospective employer shall administer, accept or use the results of any lie detector test in connection with the employment, application or consideration of an individual, or have administered, inside the District of Columbia, any lie detector test to any employee, or, in or during any hiring procedure, to any person whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.

(b) The provisions of this section shall not apply to any criminal or internal disciplinary investigations conducted by the Metropolitan Police, the Fire Department and the Department of Corrections. (Mar. 6, 1979, D.C. Law 2-154, § 3, 25 DCR 6980.)

Legislative History of Law 2-154. See note to § 36-901.

Section referred to in section. 36-903.

§ 36-903. Invasion of privacy — Contracts — Arbitration decisions — Criminal penalties — Civil liability — Alternative remedies.

(a) Any administration of a lie detector test to any employee or person seeking employment, in violation of section 36-902, shall be an unwarranted invasion of privacy in the District of Columbia, and shall be compensable by damages for tortious injury.

(b) No contract or arbitration decision shall contain any provision in violation of section 36-902.

(c) Any employer, who violates the provisions of section 36-902, shall be guilty of a misdemeanor and subject to a fine of \$500.00, or thirty (30) days in jail or both, upon conviction.

(d) Any employer who violates the provisions of this chapter shall be civilly liable to the person who he or she required to take a polygraph or similar examination, and the amount of damages shall be established by the court, plus reasonable attorney's fees. Remedies available under subsection (c) of this section and this subsection shall be deemed alternative or joint relief, and not subject to waiver by the exercise of the other. (Mar. 6, 1979, D.C. Law 2-154, § 4, 25 DCR 6980.)

Legislative History of Law 2-154. See note to § 36-901.

TITLE 37.—LIBRARIES

| Chap. | Sec. |
|-------------------------------|--------|
| 1. Public Libraries | 37-101 |

CHAPTER 1.—PUBLIC LIBRARIES

| Sec. | Sec. |
|---|---|
| 37-103. Persons entitled to use of library — Deposit of fees. | 37-105. Duties — Librarian and employees — Annual report. |

§ 37-103. Persons entitled to use of library — Deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of the District of Columbia Public Library including the use of books and other materials, as a lending or circulating library, subject to rules and regulations established by the Board of Library Trustees. For purposes of this section, persons living outside of the District of Columbia but having regular business or employment or attending school in the District of Columbia shall also be deemed temporary residents of the District of Columbia. Persons residing in jurisdictions outside of the District of Columbia but within the Washington Metropolitan Area (the Washington Metropolitan Area means the Standard Metropolitan Statistical Area (SMSA)) who do not qualify as temporary residents in the manner described above may obtain a free library user's card from the District of Columbia Public Library: Provided, that the jurisdiction in which such person resides permits District of Columbia residents to obtain a free library user's card from the public library in that jurisdiction. Any person residing in the Washington Metropolitan Area who does not qualify under any of the conditions stated above for the free library user's card may obtain a library user's card from the District of Columbia Public Library upon payment of a fee to be fixed by the Board of Library Trustees. (June 3, 1896, 29 Stat. 244, ch. 315, § 3, formerly § 2; renumbered and amended Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3; Mar. 3, 1979, D.C. Law 2-131, § 2, 25 DCR 3487.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-131, amended section by rewriting the section.
Legislative History of Law 2-131. Law 2-131 was introduced in Council and assigned Bill No. 2-215, which was referred to the Committee on Education, Recreation

and Youth Affairs. The Bill was adopted on first and second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-278 and transmitted to both Houses of Congress for its review.

§ 37-105. Duties — Librarian and employees — Annual report.

The said board shall have power to provide for the proper care and preservation of said library, to prescribe rules for taking and returning books, to fix, assess, and collect fines and penalties for the loss or injury to books, and for the retention of books beyond the period fixed by library regulations, and to establish all other needful rules and regulations for the management of the library as the said board shall deem proper. All fines and penalties so collected shall after June 30, 1927, be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury of the United States to the credit of said District of Columbia. The said board of trustees shall appoint a librarian to have the care and superintendence of said library, in accordance with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.), who shall be responsible to the board of trustees for the impartial enforcement of all rules and regulations lawfully established in relation to the library. The said librarian shall appoint such assistants as the board shall deem necessary for the proper conduct of the library in accordance with the provisions of subchapter VIII of chapter 3A of title 1. The said board of library trustees shall make an annual report to the Commissioner of the District of Columbia relative to the management of the said library. (June 3, 1896, 29 Stat. 244, ch. 315, § 5, formerly § 4; renumbered and amended Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5; Mar. 3, 1979, D.C. Law 2-139, § 3205 (jjj), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by inserting “in accordance with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Code, sec. 1-331.1 et seq.)” and by substituting “the” for “said” following “relation to” in the third sentence, and by substituting “for” for “to” and by adding “in accordance with the

provisions of subchapter VIII of chapter 3A of title 1 in the fourth sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

TITLE 38.—LIENS

Cross reference. For liens for recovery by District of medical care expenses for police and firemen, see § 4-1001 et seq.

| Chap. | Sec. |
|--|--------|
| 1. Mechanics, Materialmen, and Contractors | 38-101 |
| 2. Garage Keepers and Liverymen | 38-201 |

CHAPTER 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38-101. Mechanic’s lien.

NOTES TO DECISIONS

Cited in *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

§ 38-102. Notice.

NOTES TO DECISIONS

Cited in *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

§ 38-106. Owner’s duty.

NOTES TO DECISIONS

Cited in *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

§ 38-109. Priority of lien.

NOTES TO DECISIONS

This section grants a mechanic’s lien priority over a construction loan secured by a deed of trust recorded prior to the commencement of work only with respect to advances made after the mechanic files a notice of intention to assert a lien. *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

Advances postdating the filing of the mechanic’s lien are made inferior to such a lien by this section. *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

Security interests granted priority. — The first sentence of this section has long been interpreted as a

grant of priority over mechanics’ liens to security interests that attach before the commencement of work. *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

Automatically accruing interest. — The priority granted by the second sentence of this section is limited to “advance,” and automatically accruing interest cannot be said to be “advanced.” *Electrical Equip. Co. v. Security Nat’l Bank* (1979, 606 F.2d 1357, U.S. App. D.C.).

CHAPTER 2.—GARAGE KEEPERS AND LIVERYMEN

§ 38-205. Lien for storage, repairs and supplies for motor vehicles.

NOTES TO DECISIONS

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

TITLE 40.—MOTOR VEHICLES

| Chap. | Sec. |
|--|---------|
| 1. Registration of Motor Vehicles | 40-101 |
| 2. Inspection | 40-201 |
| 3. Operators' Permits | 40-301 |
| 4. Motor Vehicle Safety Responsibility | 40-401 |
| 5. Public-Owned Vehicles | 40-501 |
| 6. Regulation of Traffic | 40-601 |
| 7. Liens on Motor Vehicles or Trailers | 40-701 |
| 8. Regulation of Parking | 40-801 |
| 9. Installment Sales of Motor Vehicles | 40-901 |
| 10. Motor Vehicle Operators — Implied Consent to Blood-Alcohol Content Tests . . | 40-1001 |
| 11. Traffic Adjudication | 40-1101 |

CHAPTER 1.—REGISTRATION OF MOTOR VEHICLES

| Subchapter I.—General Provisions | Sec. |
|---|---|
| Sec. | 40-112. Interstate and intrastate privileges. |
| 40-101. Definitions. | 40-113. Registration. |
| 40-103. Fees classified and use of proceeds designated. | 40-114. Rules and regulations. |
| Subchapter II.—Rental Vehicle Tax | |
| 40-111. Definitions. | |

Subchapter I.—General Provisions

§ 40-101. Definitions.

As used in this chapter—

* * * * *

(k) The term “historic motor vehicle” means any motor vehicle whose manufacturer’s model year is at least twenty-five (25) years old or any motor vehicle which is at least fifteen (15) years old and is a make of motor vehicle no longer manufactured: Provided, that the motor vehicle has been or is being restored, preserved or maintained as an exhibition or collector’s item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer’s original specifications and is used on the public highways for the transportation of passengers or property in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, but in no event used for general transportation. Motor vehicles which are less than twenty-five (25) years old but which are fifteen (15) or more years old and which qualify as historic motor vehicles shall include but not be limited to the following makes which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard. (As amended Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629.)

Effect of Amendment.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by adding subsection (k).
Legislative History of Law 2-41. Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Finance and Revenue. The

Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.
Section referred to in section. 40-103.

§ 40-102. Registration of motor vehicles and trailers — Certificates — Tags — Duplicates — Dealers — Fees — Official and foreign vehicles and trailers — Transfers — Regulations.

NOTES TO DECISIONS

Registration laws inapplicable to federal concessionaires. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of

Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 40-103. Fees classified and use of proceeds designated.

* * * * *

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

* * * * *

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$21.

* * * * *

Class F. For each motor vehicle classified by the Mayor or his or her designated agent as an historic motor vehicle which meets the criteria established under section 40-101 (K), \$9.

* * * * *

Class G. For dealers’ identification tags and dealers’ transport identification tags, first set of tags, \$53, and \$19 for each additional set.

Class H. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

* * * * *

(f) No annual motor vehicle registration fee shall be required for a noncommercial motor vehicle owned by any veteran who has been classified by the United States Veterans Administration as totally and permanently disabled as a result of a service incurred or aggravated condition: Provided, that no more than one (1) such vehicle per qualified veteran shall receive this fee exemption.

(g) The Mayor shall direct the Director of the Department of Transportation to design and provide application forms for the exemption provided in subsection (f) of this section. The application shall be accompanied by a statement that the veteran has been classified as totally and permanently disabled by the Veterans Administration so as to meet the requirements of this subsection, and that such disability is the result of a service incurred or aggravated condition. (As amended Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 16, 1978, D.C. Law 2-55, §§ 2, 3, 5, 24 DCR 5424; Mar. 16, 1978, D.C. Law 2-60, § 2, 24 DCR 5778.)

Effect of Amendments.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by amending subsection (b) to revise class F. Act March 16, 1978, D.C. Law 2-55, amended section by striking out “\$12.00” for class D of subsection (b) and inserting in lieu thereof “\$21”, by striking out “G” for class G in subsection (b) and inserting in lieu thereof “H” and by adding new class G to subsection (b). Act March 16, 1978, D.C. Law 2-60, amended section by adding subsections (f) and (g).

Emergency Act Amendments.
1978 — For temporary amendment of classes D, E, F, G and H of subsection (b) see secs. 2, 3 and 4 of the Emergency Act to Provide for Amendments to the District of Columbia Motorized Bicycle Act and the Revenue Act for Fiscal Year 1978 (D.C. Act 2-162, Mar. 16, 1978, 24 DCR 9726); and for temporary amendment adding subsections (f) and (g), see sec. 2 of the District of Columbia Disabled Veterans Exemption Emergency Act of 1978 (D.C. Act 2-165, Mar. 28, 1978, 24 DCR 9241).

Legislative History of Law 2-41. See note to § 40-101.

Legislative History of Law 2-55. Law 2-55 was introduced in Council and assigned Bill No. 2-146, which was referred to the Committee on Finance and Revenue and to the Committee on Transportation and Environmental Affairs for comments. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15, 1977, it was assigned Act No. 2-121 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-60. Law 2-60 was introduced in Council and assigned Bill No. 2-164, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-128 and transmitted to both Houses of Congress for its review.

§ 40-104. Unlawful acts — Penalty.

Section referred to in section. 40-1110.

NOTES TO DECISIONS

Police may stop and question driver when infraction of motor vehicle code is suspected. *United States v. Hill* (1978, 458 F. Supp. 31).

Weapon noticed during stop lawfully seized. — Where police first noticed weapon in glove compartment of car when it was opened by defendant to secure the car's registration during stop on account of illegible vehicle tag, subsequent seizure of the weapon and arrest resulting therefrom were proper. *United States v. Hill* (1978, 458 F. Supp. 31).

Propriety of impoundment and inventory search. — Police impoundment and subsequent inventory search of vehicle were proper where its illegible temporary tags had been removed and seized and the vehicle could not under this section have been left standing on the public way without tags, but the search of a flight bag found inside the car trunk was beyond the scope of the inventory search. *United States v. Hill* (1978, 458 F. Supp. 31).

Subchapter II.—Rental Vehicle Tax

§ 40-111. Definitions.

For the purposes of this subchapter:

(a) The term "jurisdiction" means any state, territory or possession of the United States, the District of Columbia, a foreign country or a state or province of a foreign country.

(b) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine and designed to carry passengers: Except, that the term shall not include road rollers, farm tractors, trucks, motorcycles, motorized bicycles, vehicles with a seating capacity of ten (10) or more persons or vehicles propelled only upon stationary rails or tracks.

(c) The term "owner" means the person, corporation or firm that holds the legal title to a motor vehicle or utility trailer, the registration of which is required in the District of Columbia. If a motor vehicle is the subject of an agreement for the conditional sale or lease thereof to an operator of a rental fleet, with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee of said vehicle shall be deemed the owner for the purposes of this subchapter. If a mortgagor of a motor vehicle is entitled to possession of said vehicle, such mortgagor shall be deemed to be the owner.

(d) The term "preceding year" means the period of twelve (12) consecutive months immediately prior to September 1st of the year immediately preceding the commencement of the registration or license year for which allocation registration, as provided in section 40-113, is sought.

(e) The term "rental fleet" or "fleet" means five (5) or more rental vehicles or five (5) or more utility trailers which a rental operator designates as a rental fleet.

(f) The term "rental operator" means an owner of five (5) or more rental vehicles or utility trailers who is engaged in the business of renting or leasing, or of offering to rent or lease, to others, such vehicles or trailers without drivers.

(g) The term "rental transaction" means the renting or leasing of a rental vehicle or utility trailer and shall be deemed to occur in the jurisdiction where such vehicle or trailer first comes into possession of the person, firm or corporation renting or leasing said vehicle or trailer.

(h) The term “rental vehicle” means a motor vehicle owned by a rental operator and which is a part of a rental fleet. The term “rental vehicle” shall not include motor vehicles which are registered for commercial, livery, sightseeing or taxi purposes, nor shall the term include hearses.

(i) The term “utility trailer” means a vehicle without motor power intended or used for carrying property and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle. For the purposes of this subchapter, the term “utility trailer” shall be deemed to include only those vehicles which are owned by a rental operator and which are part of a rental fleet. (Mar. 6, 1979, D.C. Law 2-157, § 2, 25 DCR 6995.)

Emergency Act Amendment.

1979—For temporary addition of section, see sec. 2 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).

Legislative History of Law 2-157. Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively.

Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act March 6, 1979, D.C. Law 2-157, provided: “That this act may be cited as the ‘Rental Vehicle Tax Reform Act of 1978.’ ”

Section referred to in sections. 40-603, 47-2601.

§ 40-112. Interstate and intrastate privileges.

Rental fleets and utility trailers, owned by any person or firm engaging in the business of renting such vehicle, shall be extended full interstate and intrastate privileges, provided the following:

(a) Such vehicle or trailers are part of a rental fleet and are identifiable as being a part of such fleet; and

(b) Such person or firm registers a portion of said vehicles or trailers as provided in section 40-113.

(Mar. 6, 1979, D.C. Law 2-157, § 3, 25 DCR 6995.)

Emergency Act Amendment.

1979 — For temporary addition of section, see sec. 3 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).

Legislative History of Law 2-157. See note to § 40-111.

§ 40-113. Registration.

(a) *Procedure for registration.* — The Mayor of the District of Columbia shall institute a procedure whereby a rental operator shall register, with the District of Columbia Department of Transportation or its successor agency, a portion of the rental vehicles or utility trailers comprising a fleet. The number of vehicles or trailers to be registered shall be calculated according to the provisions of this section.

(b) *Rental vehicles.* — For the purpose of determining the number of rental vehicles within each rental fleet which are to be registered under this section, the following formula shall be used for each fleet:

(1) divide the gross revenue arising from all rental vehicle transactions occurring in the District of Columbia during the preceding year by the total gross revenue received in the preceding year from rental vehicle transactions in all jurisdictions in which such vehicles are operated;

(2) multiply the percentage obtained in paragraph (1), above, by the total number of rental vehicles in the fleet. The resulting figure shall be the number of rental vehicles that shall be registered in the District of Columbia.

(c) *Utility trailers.* — Each rental operator in the District of Columbia who is engaged in the business of renting utility trailers shall register a number of such trailers equal to the average number of such trailers rented in the District of Columbia during the preceding year. (Mar. 6, 1979, D.C. Law 2-157, § 4, 25 DCR 6995.)

Emergency Act Amendment.
1979 — For temporary addition of section, see sec. 4 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).

Legislative History of Law 2-157. See note to § 40-111.
Section referred to in section. 40-111.

§ 40-114. Rules and regulations.

The Mayor is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this subchapter. (Mar. 6, 1979, D.C. Law 2-157, § 7, 25 DCR 6995.)

Emergency Act Amendment.
1979 — For temporary addition of section, see sec. 7 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).

Legislative History of Law 2-157. See note to § 40-111.

CHAPTER 2.—INSPECTION

Sec.
40-201. Annual inspection of motor vehicles — Inspection fee.

§ 40-201. Annual inspection of motor vehicles — Inspection fee.

That except as otherwise currently provided in section 4.202 of Chapter IV of Title 32 of the District of Columbia Rules and Regulations or as otherwise hereinafter provided by the Council of the District of Columbia, all motor vehicles and trailers registered in the District of Columbia shall be inspected annually and at the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the “inspection fee” of \$2. The District of Columbia Council may prescribe regulations to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected in the District of Columbia. Such regulations shall fix the fee for such inspection in such amount as, in the Council’s judgment, will be commensurate with the cost to the District of Columbia of such inspection. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, Pub. L. 90-567, § 1, 82 Stat. 1002; Oct. 31, 1969, Pub. L. 91-106, title IV, § 403, 83 Stat. 174; Feb. 25, 1978, D.C. Law 2-41, § 4, 24 DCR 3629.)

Effect of Amendment.
1978 — Act Feb. 25, 1978, D.C. Law 2-41, amended section by adding the first clause to the first sentence of the section.
Legislative History of Law 2-41. See note to § 40-101.
Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Inspection laws inapplicable to federal concessionaires. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of

Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

CHAPTER 3.—OPERATORS’ PERMITS

Sec.
40-301. Operators’ permits — Application — Examination — Periods for which issued — Fee — Lost permits — Age requirements — Provisions affecting personnel of armed forces of United States and foreign nations — Contents of

Sec.
permits — Possession of operator — Operation without permit prohibited.
40-303. Nonresidents exempt from registration — Period of exemption.

§ 40-301. Operators' permits — Application — Examination — Periods for which issued — Fee — Lost permits — Age requirements — Provisions affecting personnel of armed forces of United States and foreign nations — Contents of permits — Possession of operator — Operation without permit prohibited.

* * * * *

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall be subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.): Provided, that this shall not apply to transient visitors from States in the Union which do not require drivers' permits.

* * * * *

(As amended Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275.)

Effect of Amendment.

1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by deleting "upon conviction thereof, be fined not less than \$2 nor more than \$40" and inserting in lieu thereof "shall be subject to a civil fine pursuant to the District of Columbia Traffic Adjudication Act" in the second sentence of subsection (c).

601 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. See note to § 40-1101. Section referred to in sections. 40-303, 40-1110.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec.

NOTES TO DECISIONS

Once defendant denied possession of license police appropriately ordered him out of car, since driving without a valid operator's permit is a traffic offense for

which he could have been arrested. *Little v. United States* (D.C. 1978, 393 A.2d 94).

§ 40-302. Revocation or suspension of operators' permits — Procedure — New permit after revocation — Nonresidents — Penalty.

Section referred to in section. 40-1110.

NOTES TO DECISIONS

Cited in *York v. District of Columbia* (D.C. 1979, 407 A.2d 695).

§ 40-303. Nonresidents exempt from registration — Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. This exemption shall not apply to any solid waste collection vehicle required to be licensed to engage in the collection or transportation of solid wastes in or through the District of Columbia under Title 8 of the District of Columbia Regulations. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Mayor of the District of Columbia or his designated agent has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof.

The Mayor or his designated agent shall from time to time ascertain such privileges and cause his findings to be promulgated. When the laws of any State, Territory, or possession of the United States or of a foreign country or of a political subdivision thereof contain a reciprocity provision similar to that hereinabove set forth, or the privilege extended to a legal resident of the District is for the remaining portion of the current District of Columbia registration year, then the owner of any motor vehicle who is a legal resident of such State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof shall comply with the provisions of section 40-301 and with every other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District at the time of the expiration of the current motor vehicle registration issued to such owner by such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, unless the Mayor or his designated agent shall have entered into a reciprocal agreement or arrangement with the duly authorized representatives of such State, Territory, or possession of the United States or a foreign country or political subdivision thereof, further to limit or to extend the period of time during which the validity of the motor vehicle registration and identification tags of such State, Territory, or possession of the United States or foreign country or political subdivision thereof shall be recognized by the District. The Mayor or his designated agent is hereby authorized and empowered to enter into reciprocal agreements and arrangements as aforesaid. The following persons shall, with respect to the registration of motor vehicles and the licensing of operators thereof, if they have complied with the laws of the State, Territory, or possession from which they have been elected or appointed, or of which they are legal residents, be exempt during their respective terms of office or during the period of their employment as administrative employees from compliance with section 40-301 and with any other provision of law or regulation requiring the registration of motor vehicles and the display of identification tags in the District: Senators and Representatives in Congress; Delegates to Congress; Resident Commissioners; administrative employees of Senators, Representatives, Delegates, and Resident Commissioners who are legal residents of the State, Territory, or possession from which said Senators, Representatives, Delegates, and Resident Commissioners have been elected or appointed; and officers of the executive branch of the Government of the United States who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

* * * * *

(As amended Apr. 6, 1978, D.C. Law 2-69, § 5, 24 DCR 6800.)

Effect of Amendment.
1978 — Act Apr. 6, 1978, D.C. Law 2-69, amended section by adding the second sentence in subsection (a).
Legislative History of Law 2-69. See note to § 6-502.
Succession in Government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CHAPTER 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

§ 40-418. Definitions.

NOTES TO DECISIONS

Cited in District of Columbia v. Franklin Inv. Co. (D.C. 1979, 404 A.2d 536).

§ 40-423. Service of process on nonresident.

NOTES TO DECISIONS

Cited in *Hall v. Cafritz* (D.C. 1979, 402 A.2d 828).

CHAPTER 5.—PUBLIC-OWNED VEHICLES

§ 40-501a. Official use of motor vehicles.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made appropriations for various activities, but section 210 of Pub. L. 96-93 provided that no part of any funds appropriated shall be used to pay the compensation (whether by contract or otherwise) of any individual for performing services as a chauffeur or driver for any designated officer or employee of the District of Columbia government (other than the Mayor, Chief of Police, and Fire Chief), or for performing services as a chauffeur or driver of a motor vehicle assigned for the

personal or individual use of any such officer or employee (other than the Mayor, Chief of Police, and Fire Chief), and further provided that no part of any funds appropriated in excess of \$1,000 per month in the aggregate (\$12,000 per annum) shall be used to pay the compensation (whether by contract or otherwise) of individuals for performing services as a chauffeur or driver for the Mayor, or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of the Mayor.

CHAPTER 6.—REGULATION OF TRAFFIC

| Sec. | Sec. |
|--|--|
| 40-603. Council authorized to make regulations — Department of Vehicles and Traffic — Director — Congressional tags — Titling — Arterial and boulevard highways — Council may prescribe penalties — Publication of regulations — Signs on highways — Prosecutions — Excise tax imposed for issuance of motor vehicle title | certificates — Impoundment of motor vehicle for outstanding traffic violation notices. 40-603.1. Authority of Mayor to establish fees for storing impounded vehicles. 40-605. Speeding and reckless driving. |

§ 40-603. Council authorized to make regulations — Department of Vehicles and Traffic — Director — Congressional tags — Titling — Arterial and boulevard highways — Council may prescribe penalties — Publication of regulations — Signs on highways — Prosecutions — Excise tax imposed for issuance of motor vehicle title certificates — Impoundment of motor vehicle for outstanding traffic violation notices.

* * * * *

(b) There is established in the government of the District of Columbia a department of vehicles and traffic, which under the direction of the Commissioner, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the Commissioner. The Commissioner shall appoint a director of vehicles and traffic, who shall be in charge of said department, and such other personnel as he may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The director of vehicles and traffic shall be responsible directly to the Commissioner for the faithful performance of his duties and shall be subject to removal by the Commissioner for cause.

* * * * *

(i) All prosecutions for violations of this chapter, excepting section 40-610, and this act or regulations made and promulgated under authority of this chapter shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants except as provided in the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.).

(j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District and, in the case of a sale, resale, gift or other transfer thereof, on the issuance of every subsequent certificate of title (except in the case of a bona fide gift between spouses or between parent and child) at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:

| Weight Class | Rate of Tax |
|---|-------------|
| Class I (2,799 pounds or less) | 4% |
| Class II (2,800-3,499 pounds) | 5% |
| Class III (3,500-3,999 pounds) | 6% |
| Class IV (4,000 pounds or more) | 7% |

For the purpose of this section, the Mayor or his duly authorized representative shall determine the fair market value of a motor vehicle or trailer. As used in this section, the term “original certificate of title” shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

* * * * *

- (6) Rental vehicles and utility trailers, as defined in section 40-111.
- (k) (1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are two (2) or more outstanding or otherwise unsettled traffic violation notices or notices of infraction or against which there have been issued two (2) or more warrants may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Mayor or immobilized in such manner as to prevent its operation: Except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) It shall be the duty of the officer or member of the police force or employee of the District of Columbia Department of Transportation, removing or immobilizing such motor vehicle, or under whose direction such vehicle is removed or immobilized, to inform as soon as practicable the owner of an impounded or immobilized vehicle of the nature and circumstances of the prior unsettled traffic violation notices, notices of infractions or warrants, for which or on account of which such vehicle was impounded or immobilized. In any case involving immobilization of a vehicle pursuant to this subsection, such member or officer or employee shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) The owner of such impounded or immobilized vehicle, or other duly authorized person, shall be permitted to repossess or to secure the release of the vehicle upon:

(A) (i) the depositing of the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each violation; or

(ii) depositing the amount of the potential fine and penalty for each infraction, for which there is an outstanding or otherwise unsettled traffic violation notice, notice of infraction or warrant; and

(B) upon the payment of the fees required by paragraph (4) of this section.

(4) The owner of an immobilized vehicle shall be subject to a booting fee of twenty-five dollars (\$25) for such immobilization. The owner of an impounded motor vehicle shall be subject to a towing fee of fifty dollars (\$50) plus a fee for storage. The owner of an immobilized vehicle which was impounded shall be subject to a total fee of fifty dollars (\$50) plus a fee for storage. (As amended Sept. 12, 1978, D.C. Law 2-104, §§ 501, 601, 25 DCR 1275; Mar. 3, 1979, D.C. Law 2-139, § 3205(l), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-157, § 5, 25 DCR 6995.)

Effect of Amendments.
1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by inserting the exception at the end of subsection (i) and amended subsection (k) generally.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former next-to-last sentence in subsection (b). Act Mar. 6, 1979, D.C. Law 2-157, amended section by adding paragraph (6) of subsection (j).
Emergency Act Amendments.
1978 — For temporary amendment of section, see secs. 501 and 601 of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329); Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-264, Aug. 16, 1978, 25

DCR 2431); and the Second Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-306, Nov. 27, 1978, 25 DCR 5529).
1979 — For temporary addition of paragraph (6) of subsection (j), see sec. 5 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).
Legislative History of Law 2-104. See note to § 40-1101.
Legislative History of Law 2-139. See note to § 1-331.1.
Legislative History of Law 2-157. See note to § 40-111.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Purpose of impoundment. — The impoundment remedy is directed toward insuring the appearance of the culpable party in court to answer for his parking violations. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).
Application of section. — This section applies to the registered owner, his legal representative, or a person authorized by the owner to operate the vehicle. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).
Chattel mortgagee not included. — The “owner or duly authorized person” contemplated by this section does not include a chattel mortgagee. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).
Chattel mortgagee’s right to take possession of an impounded vehicle flows not from the impoundment

provisions but from the Uniform Commercial Code provisions governing secured transactions. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).
Ownership creates a presumption of culpability due to the inconvenience of keeping watch over an illegally parked vehicle to ascertain its operator. *District of Columbia v. Franklin Inv. Co.*, (D.C. 1979, 404 A.2d 536).
Inference of culpable behavior created by this section does not attach to a secured party whose right to repossess accrues after the parking violations. *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 40-603.1. Authority of Mayor to establish fees for storing impounded vehicles.

The Mayor of the District of Columbia is authorized to establish from time to time a reasonable fee to be charged for the cost of storing impounded vehicles. Such storage fee shall not be charged for the first twenty-four (24) hour period in which a vehicle is impounded. (Sept. 12, 1978, D.C. Law 2-104, § 505, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-605. Speeding and reckless driving.

* * * * *

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.) (As amended Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275.)

Effect of Amendment.
1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section by deleting everything after the words “reckless driving,” and inserting “shall be subject to a civil fine

under the District of Columbia Traffic Adjudication Act.” in subsection (d).
Emergency Act Amendment.
1978 — For temporary enactment of section, see sec. 601

of the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. See note to § 40-1101. Section referred to in section. 40-1110.

§ 40-606. Negligent homicide.

Section referred to in section. 40-1110.

NOTES TO DECISIONS

Cited in *Cartwright v. Hyatt Corp.* (1978, 460 F. Supp. 80).

§ 40-609. Fleeing from scene of accident — Driving under the influence of liquor or drugs.

Section referred to in section. 40-1110.

§ 40-610. Smoke screens.

Section referred to in section. 40-603.

CHAPTER 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

Sec.

40-715. Appropriation.

§ 40-702. Lien to appear on certificate of title — Effect of other liens.

NOTES TO DECISIONS

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 40-715. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the Commissioner of the District of Columbia is authorized to include in his annual estimates provision for all the expenses of the office of the director and recorder incident to such purposes, and for personnel. (July 2, 1940, 54 Stat. 740, ch. 527, § 15; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a); Mar. 3, 1979, D.C. Law 2-139, § 3205 (m), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “subject to the limitations of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” at the end of the section.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 8.—REGULATION OF PARKING

Sec.

40-809. Appropriations — Employment of director —
Salaries of members of agency.

Sec.

40-810. Parking restrictions — Vehicles impounded —
Penalties.**§ 40-809. Appropriations — Employment of director — Salaries of members of agency.**

The Commissioner shall include in his annual budget such amounts as may be required from the highway fund established in section 47-1901, for the purpose of carrying out the provisions of this chapter. The Commissioner is authorized to employ a director and such other personal services as may be necessary to carry out the provisions of this chapter. The Commissioner shall fix the compensation of the members of said agency without reference to the provisions of the Classification Act of 1923: Provided, however, that the compensation of any members shall not exceed \$500 per annum: And provided further, that no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the District of Columbia or the Federal Government. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8; Oct. 28, 1949, 63 Stat. 992, ch. 782, title XI, § 1106 (a); Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 602; Mar. 3, 1979, D.C. Law 2-139, § 3205 (n), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “and the salaries of such employees, other than members of said agency, are to be fixed in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” at the end of the second sentence.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 40-810. Parking restrictions — Vehicles impounded — Penalties.

It shall constitute an infraction within the meaning of the District of Columbia Traffic Adjudication Act (D.C. Code, sec. 40-1101 et seq.) to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Mayor of the District of Columbia, and his designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this chapter and to keep the same impounded until the owner thereof, or other duly authorized person, shall pay the Bureau of Traffic Adjudication, Department of Transportation, a towing fee of \$50 plus a fee for storage. The owner of such impounded vehicle, or duly authorized person, shall be permitted to repossess the same upon depositing the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each outstanding violation, or depositing the amount of the potential fine and penalty for each infraction, for which there is an outstanding or otherwise unsettled traffic violation notice, notice of infraction, or warrant. Whoever violates the provisions of section 40-811 shall be punished by a fine of not more than \$25. In any administrative adjudication under this section or prosecution under section 40-811, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570; Sept. 12, 1978, D.C. Law 2-104, § 504, 25 DCR 1275.)

Effect of Amendment.

1978 — Act Sept. 12, 1978, D.C. Law 2-104, amended section generally.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 504 of the District of Columbia Traffic Adjudication

Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. See note to § 40-1101.

NOTES TO DECISIONS

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

§ 40-811. Same — United States public buildings and property — Regulations — Penalties.

Section referred to in section. 40-810.

CHAPTER 9.—INSTALLMENT SALES OF MOTOR VEHICLES

§ 40-902. Maximum finance charges — Computation — Proportionate adjustments — Investigation of economic conditions to determine finance charges — Regulations — Classification of parties — Waiver.

NOTES TO DECISIONS

Creditor's obligation to give notice governed by Council regulations. — Regulations promulgated by the District Council pursuant to this chapter govern a creditor's obligation to give the debtor notice of repossession and resale of collateral. *Randolph v. Franklin Inv. Co.* (D.C. 1979, 398 A.2d 340).

Cited in *Gavin v. Washington Post Employees Fed. Credit Union* (D.C. 1979, 397, A.2d 968); *Franklin Inv. Co. v. Smith* (D.C. 1978, 383 A.2d 355).

CHAPTER 10.—MOTOR VEHICLE OPERATORS—IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS

§ 40-1002. Implied consent to blood-alcohol content tests — Administration — Accidents.

NOTES TO DECISIONS

Choice to take the chemical test must be an informed one. *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84).
Warning required. — The officer administering the test must warn the motorist of the consequences of refusal. *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84).

§ 40-1005. Test refusal — Penalty — Incapacitated person — Use of evidence.

NOTES TO DECISIONS

“Otherwise in a condition rendering him incapable of refusal” refers to a person's lack of capacity to make an informed and intelligent waiver of a known right. *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84).

Person who was unconscious when tested may revoke the consent implied by the section and have the test results excluded as evidence in any enforcement proceeding. *District of Columbia v. Onley* (D.C. 1979, 399 A.2d 84).

CHAPTER 11.—TRAFFIC ADJUDICATION

Subchapter I.—Purposes; Definitions; Establishment; Hearing Examiners; Sanctions; Time Computations; Regulations
Sec.
40-1101. Statement of purposes.
40-1102. Definitions.
40-1103. Establishment.

Sec.
40-1104. Hearing examiners.
40-1105. Monetary sanctions.
40-1106. Time computation.
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40-1109. Applicability.

Sec.

- 40-1110. Exceptions.
 40-1111. Exception for serious offenders.
 40-1112. Notice of infraction.
 40-1113. Answer.
 40-1114. Hearing.

Subchapter III.—Parking, Standing, Stopping and
 Pedestrian Infractions

- 40-1115. Applicability.
 40-1116. Exceptions for serious offenders.
 40-1117. Notice of infraction.
 40-1118. Civil liability.
 40-1119. Answer.

Sec.

- 40-1120. Hearing.

Subchapter IV.—Administrative Review

- 40-1121. Appeals Board.
 40-1122. Right of appeal.
 40-1123. Scope of review.
 40-1124. Time limitation.
 40-1125. Judicial review.

Subchapter V.—Separability; Effective Date

- 40-1126. Separability.
 40-1127. Effective date.

*Subchapter I.—Purposes; Definitions; Establishment; Hearing
 Examiners; Sanctions; Time Computations; Regulations*

§ 40-1101. Statement of purposes.

It is the intent of the Council of the District of Columbia (hereinafter referred to as the "Council") in the adoption of this chapter to decriminalize and to provide for the administrative adjudication of certain violations of Title 32 of the D.C. Rules and Regulations (Motor Vehicle Regulations for the District of Columbia), and certain offenses codified in Title 40 of the District of Columbia Code, in the Highways and Traffic Regulations of the District of Columbia, and in Chapter III of Title 14 of the D.C. Rules and Regulations (relating to the operation of taxicabs), and to provide for the civilian enforcement of parking infractions, and thereby to establish a uniform and more expeditious system and continue to assure an equitable system for the disposition of traffic offenses. (Sept. 12, 1978, D.C. Law 2-104, § 101, 25 DCR 1275.)

Emergency Act Amendment.

1978 — For temporary enactment of chapter, see the District of Columbia Traffic Adjudication Emergency Act of 1978 (D.C. Act 2-216, July 1, 1978, 25 DCR 1329).

Legislative History of Law 2-104. Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary, with title 5 of said act being referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 13, 1978 and

June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 12, 1978, D.C. Law 2-104, 25 DCR 1275, provided "That this act may be cited as the 'District of Columbia Traffic Adjudication Act of 1978.' "

Section referred to in sections. 40-301, 40-603, 40-605.

§ 40-1102. Definitions.

For the purpose of this chapter:

- (a) The term "Department" means the District of Columbia Department of Transportation.
- (b) The term "Director" means the Director of the District of Columbia Department of Transportation.
- (c) The term "District" means the District of Columbia.
- (d) The term "infraction" means any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the Corporation Counsel does not commence a proceeding in the Superior Court of the District of Columbia.
- (e) The term "lessor" means any owner of a vehicle engaged in the business of renting or leasing vehicles to be used or operated in the District.
- (f) The term "operator" means (1) any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District; (2) an owner who operates his own vehicle; or (3) a person who operates a vehicle owned by another.
- (g) The term "owner" means (1) any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or (2) any registrant of a vehicle used or operated in the District; or (3) any person, corporation, firm, agency,

association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District. (Sept. 12, 1978, D.C. Law 2-104, § 102, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1103. Establishment.

There are hereby established within the Department of Transportation of the District of Columbia a Bureau of Traffic Adjudication which shall be headed by an Assistant Director of Transportation for Administrative Adjudication and a Bureau of Parking and Enforcement which shall be headed by an Assistant Director for Parking and Enforcement. (Sept. 12, 1978, D.C. Law 2-104, § 103, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1104. Hearing examiners.

(a) The Director shall appoint and prescribe the duties of a chief hearing examiner and such other hearing examiners as are necessary to implement the provisions of this chapter. No person may be employed as a hearing examiner for more than five (5) years.

(b) The hearing examiners, in addition to the powers granted them by Chapter IX of Title 32 of the D.C. Rules and Regulations, shall have the following powers:

(1) to determine in prescribed cases whether a member of the Metropolitan Police Department or the Department of Transportation shall be called as a witness in an adjudication pursuant to subchapters II and III of this chapter;

(2) to impose sanctions for infractions under subchapter II of this chapter including: (A) monetary fines and penalties; (B) the required attendance at traffic school; and (C) the suspension of operators' permits pending the payment of monetary fines and penalties or the successful completion of traffic school;

(3) to impose monetary fines and penalties for infractions under subchapter III of this chapter;

(4) to permit the payment of monetary fines and penalties in excess of fifty dollars (\$50.00) in monthly installments over a period not greater than six (6) months. In the case of a moving infraction, the hearing examiner may suspend the respondent's operators' permit if the fines and penalties have not been paid upon termination of the installment period or if the respondent defaults on two (2) consecutive installments.

Such suspension shall take effect upon service of a notice of suspension upon the respondent, by personal service, by leaving such notice at his recorded address with a person of suitable age and discretion residing therein or by certified mail sent to his recorded address and shall remain in effect until the fines and penalties are paid: Provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect five (5) days from the date the notice was sent by regular mail; and

(5) to suspend the imposition of traffic violation points (other than those based upon offenses listed in section 40-1110) conditioned upon (A) good driving behavior (B) the successful completion of traffic school or other rehabilitative measures.

(Sept. 12, 1978, D.C. Law 2-104, § 104, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1105. Monetary sanctions.

(a) The maximum monetary sanctions that may be imposed under this chapter shall be as follows:

(1) The civil fine for an infraction shall be an amount equal to the collateral or bond established for the offense, equivalent to such infraction, by the Board of Judges of the Superior Court of the District of Columbia on the date immediately preceding the effective date of this chapter. The Mayor may modify this schedule of fines thereafter by order. Such order shall become effective at the expiration of forty-five (45) days unless the Council shall, during such period, adopt a resolution disapproving or modifying such Mayor's order. If the Council adopts a resolution modifying such order, the order shall take effect as so modified.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) In the case of a person receiving a Notice of Infraction who fails to answer such notice within the time specified by sections 40-1113(d) or 40-1119(d), a penalty equal to the amount of the civil fine;

(B) In the case of a person receiving a Notice of Infraction and fails to answer such notice by the close of business on the date set for the hearing or who answers but fails without good cause to appear at such hearing, with respect to infractions under subchapter II of this chapter, a penalty equal to twice the amount of the civil fine and, with respect to infractions under subchapter III of this chapter, a penalty equal to the amount of the civil fine plus five dollars (\$5.00).

(b) A respondent may pay such fines and penalties by use of credit cards approved by the Director. The Director may pay a reasonable percentage of monies collected to private agencies for the collection of fines, penalties and fees. (Sept. 12, 1978, D.C. Law 2-104, § 105, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in sections. 40-1113, 40-1114, 40-1119, 40-1120.

§ 40-1106. Time computation.

In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. (Sept. 12, 1978, D.C. Law 2-104, § 106, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1107. Regulations.

The Director is authorized to promulgate regulations necessary to carry out the purposes of this chapter. (Sept. 12, 1978, D.C. Law 2-104, § 107, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1127.

§ 40-1108. Report to Council.

By June 30th of each year, the Mayor shall submit to the Council a report on parking and traffic enforcement for the previous calendar year. The report shall include, but not be limited to, the following:

- (a) the number of persons hired as hearing examiners;
 - (1) the level of compensation for each hearing examiner;
 - (2) the length of time each hearing examiner has served in that capacity; and
 - (3) the qualifications for hearing examiners;
- (b) the number of Notices of Infraction issued;
 - (1) the number of Notices of Infraction issued for moving infractions;
 - (2) the number of Notices of Infraction issued for parking, standing, stopping and pedestrian infractions; and
 - (3) the number of Notices of Infraction issued by each agency authorized to issue Notices of Infraction;
- (c) the number of answers filed for moving infractions;
 - (1) the number of “admit” answers filed for moving infractions;
 - (A) the number of hearings held for respondents who admit the commission of moving infractions; and
 - (B) the number of suspensions and revocations of respondents who admit the commission of moving infractions;
 - (2) the number of “admit with explanation” answers filed for moving infractions; the number of suspensions and revocations of respondents who admit with explanation the commission of a moving infraction;
 - (3) the number of “deny” answers filed for moving infractions;
 - (A) the number of determinations of liability of respondents who deny the commission of moving infractions;
 - (B) the number of dismissals of respondents who deny the commission of moving infractions; and
 - (C) the number of suspensions and revocations of respondents who deny the commission of moving infractions;
 - (4) the number of suspensions for failure to answer Notices of Infraction; and
 - (5) the number of suspensions for failure to appear at a hearing;
- (d) the number of answers filed for parking, standing, stopping and pedestrian infractions;
 - (1) the number of “admit” answers filed for parking, standing, stopping and pedestrian infractions;
 - (2) the number of “admit with explanation” answers filed for parking, standing, stopping and pedestrian infractions; and
 - (3) the number of “deny” answers filed for parking, standing, stopping and pedestrian infractions;
 - (A) the number of determinations of liability of respondents who deny the commission of parking, standing, stopping and pedestrian infractions; and
 - (B) the number of dismissals of respondents who deny the commission of parking, standing, stopping and pedestrian infractions;
- (e) the number of Notices of Infraction for which sanctions are imposed;
 - (1) the number of Notices of Infraction for which a civil fine is imposed;
 - (2) the number of Notices of Infraction for which a penalty is imposed; and
 - (3) the number of Notices of Infraction for which attendance at traffic school is required;
- (f) the number of Notices of Infraction issued to lessors covered under section 40-1118;
 - (1) the penalties and fines imposed for infractions under section 40-1118;
 - (2) the penalties and fines actually paid under section 40-1118;
 - (3) the number of outstanding infractions under section 40-1118; and
 - (4) the amount of fines and penalties outstanding under section 40-1118;
- (g) the number of appeals filed with the Appeals Boards;
 - (1) the number of decisions set aside by Appeals Boards;
 - (2) the number of decisions affirmed by Appeals Boards;
 - (3) the list of attorneys available for service on Appeals Boards;
 - (4) the list of citizens available for service on Appeals Boards; and

- (5) a list of each Appeals Board appointed by the Director;
 - (h) the number of appeals filed with the Superior Court of the District of Columbia;
 - (1) the number of decisions set aside by the Superior Court of the District of Columbia;
 - and
 - (2) the number of decisions affirmed by the Superior Court of the District of Columbia;
 - (i) the number of appeals filed with the District of Columbia Court of Appeals;
 - (1) the number of decisions set aside by the District of Columbia Court of Appeals; and
 - (2) the number of decisions affirmed by the District of Columbia Court of Appeals;
 - (j) the number of vehicles towed and booted;
 - (1) the number of vehicles towed;
 - (2) the number of vehicles booted;
 - (3) the average cost of each tow; and
 - (4) the average cost of each booting;
 - (k) the total revenues generated by this chapter;
 - (1) the total collected in fines and penalties;
 - (2) the total collected in towing fees; and
 - (3) the total collected in booting fees.
- (Sept. 12, 1978, D.C. Law 2-104, § 108, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter II. — Moving Infractions

§ 40-1109. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to the operation of any vehicle in the District, except those violations covered by subchapter III of this chapter or those violations excepted by sections 40-1110 and 40-1111, shall be processed and adjudicated pursuant to the provisions of this subchapter. (Sept. 12, 1978, D.C. Law 2-104, § 201, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1110. Exceptions.

The provisions of this subchapter shall not apply to the following violations, which shall continue to be prosecuted as criminal offenses:

- (a) any felony or any misdemeanor for which the provision prohibiting the same is not codified in:
 - (1) Title 40 of the District of Columbia Code;
 - (2) Title 14 of the D.C. Rules and Regulations;
 - (3) Title 32 of the D.C. Rules and Regulations; or
 - (4) Highways and Traffic Regulations of the District of Columbia:

Provided, that upon the Mayor complying with section 1-1602, and transmitting to the Council a complete and accurate draft of a District of Columbia Municipal Code, this subsection shall stand amended upon publication of such Municipal Code to substitute in items (2), (3) and (4) of this subsection, the appropriate titles of such Municipal Code;

- (b) violation of section 40-605 (b);
- (c) violation of section 40-606;
- (d) violation of section 40-609 (a);
- (e) violation of section 40-609 (b);
- (f) violation of section 40-610;
- (g) violation of section 40-104;

- (h) violation of section 40-301 (d);
 - (i) violation of section 40-302 (e);
 - (j) violation of Commissioners' Order No. 57-1086, dated June 11, 1957 (Highway and Traffic Regulations, sec. 22 (d)) (driving at a speed greater than thirty (30) miles per hour in excess of the legal speed limit);
 - (k) violation of section 2.401 (1) of Title 32 of the D.C. Rules and Regulations (failure or refusal to surrender an operator's license which has been suspended, revoked or cancelled);
 - (l) commission of any offense contained in Chapters VII or VIII of Title 32 of the D.C. Rules and Regulations;
 - (m) violation of section 11.701 (a) of Title 32 of the D.C. Rules and Regulations (tampering with a locked or secured bicycle);
 - (n) violation of section 2.501 of Title 32 of the D.C. Rules and Regulations (acting as a driving school instructor without a license);
 - (o) violation of section 2.801 of Title 32 of the D.C. Rules and Regulations (operating a school bus without a permit);
 - (p) violation of section 5.201 of Title 32 of the D.C. Rules and Regulations (carrying on or conducting the business of a dealer without a registration); and
 - (q) violation of subsection (d) of Commissioners' Order No. 66-535, dated April 21, 1966 (Highways and Traffic Regulations, sec. 87 (d)) (unauthorized use of emergency parking permits).
- (Sept. 12, 1978, D.C. Law 2-104, § 202, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in sections. 40-1104, 40-1109.

§ 40-1111. Exception for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed an infraction who, during the eighteen (18) month period immediately preceding the date of the infraction, has been assessed twelve (12) or more traffic points pursuant to the section 2.305 of Title 32 of the D.C. Rules and Regulations. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment of up to ten (10) days, or both, in addition to any penalties imposed for driving after suspension or revocation.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated twelve (12) or more traffic points pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter: Provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within fifteen (15) calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated in the manner of civil infractions pursuant to this subchapter.

(c) A person, over whom the Corporation Counsel asserts jurisdiction pursuant to this section, shall be notified that his infraction shall be subject to criminal prosecution. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (Sept. 12, 1978, D.C. Law 2-104, § 203, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1109.

§ 40-1112. Notice of infraction.

(a) The Notice of Infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the Notice of Infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The Notice of Infraction may be the same as the uniform traffic violation notice.

(b) The Notice of Infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer the infraction alleged in the notice.

(c) The Notice of Infraction shall advise the person to whom it is issued that his failure to answer the Notice of Infraction within fifteen (15) calendar days from the date of issuance or greater period established by the Director by regulation shall by operation of law result in a suspension of his District operator's permit or, in the case of a person who is not a resident of the District, his privilege to drive within the District, pending his compliance with section 40-1113.

(d) If a hearing examiner determines that a Notice of Infraction is defective on its face, he shall enter an order dismissing the Notice of Infraction and promptly notify the person to whom it was issued. (Sept. 12, 1978, D.C. Law 2-104, § 204, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1113. Answer.

(a) In answer to a Notice of Infraction, a person to whom such notice was issued may:

- (1) admit his commission of the infraction;
- (2) admit his commission of the infraction with an explanation which the hearing examiner may take into account in the imposition of a sanction for the infraction; or
- (3) deny his commission of the infraction.

No other response shall constitute an answer for purposes of this subchapter: Except, that a person who appears before a hearing examiner and refuses to enter an answer admitting, admitting with explanation or denying the commission of the infraction shall be deemed to have denied the infraction.

(b) Except as provided in subsections (c) and (d) of this section, a person to whom a Notice of Infraction has been issued may answer by personal appearance or by mail. Answers by telephone may be permitted by regulation.

(c) A person admitting that an infraction occurred shall, at the same time he submits his answer, pay the civil fine and any additional penalties established pursuant to section 40-1105, as may be due for failure to answer within the time required by subsection (d) of this section. In such case, such person need not appear at the hearing, unless the commission of such infraction would subject him to the suspension or revocation of his license or privilege to drive pursuant to Chapter II of Title 32 of the D.C. Rules and Regulations in which case he shall answer in person.

(d)(1) A person to whom a Notice of Infraction has been issued must answer within fifteen (15) calendar days of the date the notice was issued or within a greater period of time as prescribed by the Director by regulation. If a person fails to answer such notice within this period, such person's operators' permit, in the case of a resident of the District or other person with a District operators' permit, or such person's privilege to drive within the District, in the case of a nonresident or resident licensed in another jurisdiction, shall by operation of law be suspended until such person answers the notice.

(2) A notice of such suspension shall be personally served upon the respondent or left at his recorded address with a person of suitable age and discretion residing therein or shall be mailed by certified mail to him at his recorded address. Such suspension shall take effect five (5) days after the personal service or the receipt of certified mail: Provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if, immediately upon advice of such refusal, the Director causes a copy of the

notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect five (5) days from the date the notice was sent by regular mail.

(3) A person who fails to answer within the prescribed period referred to in subsection (a) (1) of this section shall answer by personal appearance unless permitted by regulation by the Director to answer by other means.

(Sept. 12, 1978, D.C. Law 2-104, § 205, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in sections. 40-1105, 40-1112, 40-1114.

§ 40-1114. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the D.C. Rules and Regulations except as provided by this chapter. The burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence.

(b) If a person to whom a Notice of Infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may suspend that person's license or privilege to drive until such person appears at a hearing or pays a civil fine pursuant to section 40-1113 (c). Such suspension shall take effect and notice shall be given in accordance with section 40-1113 (d).

(c) The police officer issuing the Notice of Infraction shall appear at the hearing of a case wherein the respondent has denied the commission of the infraction. The police officer issuing the Notice of Infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or has admitted with explanation the commission of the infraction unless (1) the respondent requests the presence of the officer at the same time that he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or (2) the hearing examiner decides to require such presence.

(d) After due consideration of the evidence and arguments presented, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charge shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(e) An order, entered pursuant to a determination that an infraction has been established or pursuant to the receipt of an answer admitting the infraction or admitting the infraction with explanation, shall be civil in nature but shall be treated as an adjudication that an infraction has been committed for the purposes of this chapter and for the purposes of the assessment of traffic points pursuant to Chapter II of Title 32 of the D.C. Rules and Regulations.

(f) The hearing examiner may impose as sanctions for such infraction:

- (1) a civil fine and applicable penalties as prescribed pursuant to section 40-1105;
- (2) the required completion of traffic school; or
- (3) both of the preceding sanctions.

(g) In making the determination whether an infraction is established, the hearing examiner shall not consider the traffic record of the respondent, unless so requested by the respondent. However, the hearing examiner shall consider the respondent's traffic record in determining the appropriate sanction to impose.

(h) The hearing examiner may stay the imposition of any sanction imposed pending administrative review pursuant to Part F of Chapter IX of Title 32 of the D.C. Rules and Regulations and subchapter IV of this chapter: Provided, that the respondent posts a security in the amount of the civil fine and any penalties and, in the case where the sanction includes the suspension or revocation of his license to drive, surrenders his operator's permit to the Bureau of Traffic Adjudication. If a respondent surrenders his operator's permit, a temporary permit

shall be issued pursuant to the standards set forth in section 9.202 (b) (2) of Title 32 of the D.C. Rules and Regulations.

(i) All civil fines and other monies collected pursuant to the provisions of this title shall be paid into the general fund of the District. (Sept. 12, 1978, D.C. Law 2-104, § 206, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter III.—Parking, Standing, Stopping and Pedestrian Infractions

§ 40-1115. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to parking, standing, stopping or pedestrian offenses within the District shall be processed and adjudicated pursuant to the provisions of this subchapter, except as provided in section 40-1116. (Sept. 12, 1978, D.C. Law 2-104, § 301, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1116. Exceptions for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed a parking, standing, or stopping infraction who, during the eighteen (18) months immediately preceding the date of the infraction, has been assessed in excess of seven hundred and fifty dollars (\$750) in fines, including any penalties imposed by law for failure to timely pay such fines. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment of up to ten (10) days, or both, for each infraction.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated in excess of seven hundred and fifty dollars (\$750) in fines pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter: Provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within fifteen (15) calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated as a civil infraction pursuant to this subchapter.

(c) A person over whom the Corporation Counsel asserts jurisdiction pursuant to this section shall be notified that his infraction shall be treated as a criminal matter. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (Sept. 12, 1978, D.C. Law 2-104, § 302, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Section referred to in section. 40-1115.

§ 40-1117. Notice of infraction.

(a) The Notice of Infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the Notice of Infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The Notice of Infraction may be the same as the uniform traffic violation notice.

(b) The Notice of Infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer to the infraction alleged in the notice. Such notice shall also contain a warning to advise the person cited that failure to answer in the manner and time provided shall result in additional monetary penalties and that failure to appear at the hearing shall be deemed an admission of liability and that a default judgment may be entered thereon. A duplicate of each Notice of Infraction shall be served on the person to whom it is issued as provided in subsection (c) of this section. The original or a facsimile thereof shall be filed with the Department and retained by the Department and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(c) A Notice of Infraction shall be served personally upon the operator of a vehicle who is present at the time of service and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the make or model of such vehicle, shall be inserted therein. If the operator is not present, the Notice of Infraction shall be served upon the owner of the vehicle by affixing such notice to such vehicle in a conspicuous place, by inserting the word “owner” in the space provided for identification of such person and by noting the plate designation and plate type as shown by the registration plates of such vehicle together with the make or model of such vehicle. Service of the Notice of Infraction or a duplicate thereof by affixation, as herein provided, shall have the same force and effect and shall be subject to the same penalties for the disregard thereof as though the Notice of Infraction was personally served on the owner and operator of the vehicle.

(d) For purposes of this section, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive Notices of Infraction, whether personally served on such operator or served by affixation, and service made in either manner shall also be deemed to be lawful service upon such owner.

(e) If a hearing examiner determines that a Notice of Infraction is defective on its face, he shall enter an order dismissing the Notice of Infraction and promptly notify the person to whom it was issued. (Sept. 12, 1978, D.C. Law 2-104, § 303, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1118. Civil liability.

(a) The operator of a vehicle shall be primarily liable for the civil penalties imposed pursuant to this subchapter. Subject to the provisions of subsections (b) and (c) of this section, the owner of the vehicle, even if not the operator thereof, shall also be liable therefor, unless he can show that such vehicle was used without his permission, express or implied. An owner who pays any civil fine or penalties pursuant to this subchapter shall have the right to recover same from the operator and shall have a cause of action against the operator of the vehicle for such amount paid.

(b) The lessor of a vehicle shall not be liable for fines or penalties imposed for an infraction pursuant to this subchapter if:

(1) prior to the infraction, the lessor has filed with the Bureau the license plate number and state or registration of the vehicle to which the Notice of Infraction was issued; and

(2) within thirty (30) days after receiving notice from the Bureau of the date and time of an infraction, as well as other information contained in the original Notice of Infraction, the lessor submits to the Bureau the correct name and address of the person to whom the vehicle identified in the Notice of Infraction was rented or leased at the time of the infraction and the lessor notifies such person by mail of the Notice of Infraction.

(c) Where the lessor has paid any fine or penalty for which he is liable and the Bureau thereafter collects from the person to whom the vehicle was rented or leased the amount of the scheduled fine and penalties owed by such person, or any portion thereof, the lessor shall be entitled to reimbursement from the Bureau of the amount of the fines and penalties paid by the lessor, less the Bureau's cost of collection.

(d) Where the lessor is liable for an infraction, he shall not be liable for penalties in excess of the standard civil fine unless the lessor fails to answer within fifteen (15) calendar days of his actual receipt of the Notice of Infraction. (Sept. 12, 1978, D.C. Law 2-104, § 304, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.
Section referred to in section. 40-1108.

§ 40-1119. Answer.

(a) In answer to a Notice of Infraction, a person to whom such notice was issued may:

- (1) admit, by the payment of the appropriate civil fine, the commission of the infraction;
- (2) admit the commission of the infraction with an explanation which the hearing examiner may take into account in the imposition of a civil fine for the infraction; or
- (3) deny liability for the infraction.

No other response shall constitute an answer for purposes of this subchapter: Except, that a person who appears before a hearing examiner and refuses to enter an answer admitting, admitting with explanation or denying the commission of the infraction shall be deemed to have denied the infraction.

(b) A person to whom a Notice of Infraction has been issued may answer by personal appearance or by mail. Answers by telephone may be permitted by regulation.

(c) A person admitting the commission of an infraction shall, at the same time he submits his answer, pay the civil fine and any additional penalties, established pursuant to section 40-1105, as may be due for failure to answer within the time required by subsection (d) of this section without appearing at the hearing.

(d) A person to whom a Notice of Infraction has been issued shall answer within fifteen (15) calendar days of the date the notice was issued. Failure to answer within the prescribed period may result in imposition of monetary penalties established by section 40-1105, in addition to the potential civil fine for the infraction.

(e) Any person who desires the presence at the hearing of the police officer or the Department of Transportation employee who served the Notice of Infraction on such person must so demand at the same time such person answers to the infraction. (Sept. 12, 1978, D.C. Law 2-104, § 305, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.
Section referred to in sections. 40-1105, 40-1120.

§ 40-1120. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the D.C. Rules and Regulations except as provided in this chapter.

(b) The burden of proof shall be upon the District, and no infraction may be established except upon proof by a preponderance of the evidence.

(c) The police officer or Department employee issuing the Notice of Infraction shall appear at the hearing of a case wherein the respondent has denied that the infraction occurred by his commission: Provided, that demand therefor has been made pursuant to section 40-1119 (e). The police officer or Department employee issuing the Notice of Infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or admitted with explanation that the infraction occurred by his commission (1) unless the respondent requests the presence of the officer or employee, as the case may be, at the same time he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose or (2) unless the hearing examiner decides to require such presence.

(d) If a person to whom a Notice of Infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may enter a judgment by default sustaining the charges, fix the appropriate fine and assess appropriate penalties, if any, if the infraction is established by a preponderance of the evidence. Before such a default judgment is entered, the Department shall notify the respondent by regular mail that an infraction is outstanding, that a default judgment is pending and that such judgment may be avoided by entering an answer or making an appearance within thirty (30) days of such notice. Such notice shall be mailed to the respondent's recorded address.

(e) A judgment by default may be vacated by the hearing examiner within one (1) year of its entry only upon written application setting forth (1) a sufficient defense to the charge and (2) excusable neglect as to the respondent's failure to attend the hearing.

(f) After due consideration of the evidence and arguments, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charges shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(g) The hearing examiner may impose a civil fine for violation of infractions to which this subchapter is applicable up to and including an amount prescribed by section 40-1105 exclusive of fees and charges imposed for the towing or booting of a vehicle or additional penalties imposed for failure to answer to such infraction in a timely manner.

(h) All civil fines and other monies collected pursuant to the provisions of this subchapter shall be paid into the general fund of the District. (Sept. 12, 1978, D.C. Law 2-104, § 306, 25 DCR 1275).

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter IV.—Administrative Review

§ 40-1121. Appeals Board.

The Director shall establish Appeals Boards to consider and determine appeals brought by persons aggrieved by decisions of hearing examiners. The Director shall appoint to each Appeals Board one (1) employee of the Department of Transportation, one (1) attorney from a list of practicing and willing attorneys submitted by the District of Columbia Bar or, if no such list is submitted, from a list compiled by the Director and one (1) citizen from a list of willing citizens compiled and kept by the Director. In compiling and keeping such list of citizens, the Director shall consult with the various Advisory Neighborhood Commissions. The Director shall appoint a chairperson for each Appeals Board. Members of Appeals Boards who are not employees of the District government shall receive compensation equivalent to the rate established for a GS-14 employee in the Civil Service prorated according to the number of hours actually served. Employees of the District government may not receive additional compensation but shall receive administrative leave during their actual service on an Appeals Board. All members of Appeals Boards shall receive reimbursement for actual expenses incurred. The Director shall designate employees of the Department to assist the Appeals Boards and shall provide such facilities and supplies as are necessary to enable the Appeals Boards to carry out their functions. (Sept. 12, 1978, D.C. Law 2-104, § 401, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.
Section referred to in section. 40-1122.

§ 40-1122. Right of appeal.

Any person who is aggrieved by a determination of a hearing examiner, either as to the existence of liability or the sanction imposed therefor, or both, may appeal such determination pursuant to this subchapter. The Director shall appoint an Appeals Board, pursuant to section

40-1121, to consider and determine the appeal. (Sept. 12, 1978, D.C. Law 2-104, § 402, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1123. Scope of review.

Each Appeals Board shall review each case before it on the record and shall hold unlawful and set aside any action or findings and conclusions found to be (a) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority or limitations or short of statutory rights; (d) without observance of procedure required by law, including any applicable procedure provided by this chapter; or (e) unsupported by substantial evidence in the record of the proceedings before the Appeals Board. (Sept. 12, 1978, D.C. Law 2-104, § 403, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1124. Time limitation.

(a) No appeal shall be reviewed if it is filed more than fifteen (15) calendar days after service of notice of the determination appealed from.

(b) Service of notice under this section shall be complete when the respondent is orally informed of the determination at the hearing or, if the respondent is not orally informed at the hearing, service of notice shall be complete three (3) calendar days after the Department mails notice of the determination to the respondent.

(c) An appeal filed by mail shall be timely if postmarked within the fifteen (15) day period. (Sept. 12, 1978, D.C. Law 2-104, § 404, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1125. Judicial review.

Appeals from decisions of the Appeals Board shall be by application for the allowance of an appeal filed in the Superior Court of the District of Columbia within thirty (30) days of the decision of the Appeals Board: Provided, that appeals from the suspension or revocation of one's license or privilege to drive shall continue to be governed by section 1-1510. Except to the extent that this chapter provides otherwise, the manner of and standards for appeals to the Superior Court of the District of Columbia shall be as set forth in section 1-1510. (Sept. 12, 1978, D.C. Law 2-104, § 405, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

Subchapter V.—Separability; Effective Date

§ 40-1126. Separability.

If any provision of this chapter or the application of such provision to any person or circumstances shall be held unconstitutional or otherwise invalid, the constitutionality or validity or the remainder of this chapter and the applicability of such provision to other persons or circumstances shall not be affected thereby. (Sept. 12, 1978, D.C. Law 2-104, § 701, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

§ 40-1127. Effective date.

The provisions of this chapter shall apply only to violations which occur after the Director has promulgated the necessary regulations to carry out this chapter pursuant to section 40-1107. (Sept. 12, 1978, D.C. Law 2-104, § 702, 25 DCR 1275.)

Legislative History of Law 2-104. See note to § 40-1101.

TITLE 41.—PARTNERSHIPS

Cross reference. For certification and registration of accounting partnerships, see § 2-944 et seq.

TITLE 43.—PUBLIC UTILITIES

Cross references. For hazardous waste management, see § 6-521 et seq. For energy resources shortages, see § 6-2301 et seq.

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CHAPTER 2. — CREATION OF PUBLIC SERVICE COMMISSION
— MEMBERS — COUNSEL — EMPLOYEES

| Sec. | Sec. |
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| 43-201. Members — Eligibility of Commissioners — Oath. | 43-205a. Same; Appropriations. |
| 43-205. People’s Counsel — Appointment, compensation, qualifications — Personnel — Duties. | 43-206. Employees — Expenses — Expenditures. |

§ 43-201. Members — Eligibility of Commissioners — Oath.

The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The members first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978. Each of the appointed commissioners shall receive a salary at the top step of grade 16, as provided in section 5332 of Title 5 of the United States Code, or equivalent compensation provided pursuant to the provisions of subchapter XI of chapter 3A of title 1. The Chairperson of the Commission shall serve as the chief administrative officer of the Commission. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Commission shall at least biennially elect a chairman by a majority vote of its members. No Commissioner shall, during his term of office, hold any other public office. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of Commissioner of said Public Service Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such Commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such Commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to

do so his office shall become vacant. Before entering upon the duties of his office each Commissioner, the secretary of the Commission, the counsel of the Commission and every employee of said Commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (39) (A), 84 Stat. 572; Dec. 24, 1973, Pub. L. 93-198, title IV, § 493(b), 87 Stat. 811; Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178; Mar. 3, 1979, D.C. Law 2-139, § 3205 (hhh), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “top step of grade 16, as provided in section 5332 of Title 5 of the United States Code, or equivalent compensation provided pursuant to the provisions of subchapter XI of chapter 3A of title 1” for “rate of \$7,500 per annum” in the third sentence and by inserting the fourth sentence.

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 43-201a. Function of Commission — Unjust, unreasonable, or discriminating charge prohibited.

NOTES TO DECISIONS

Every unjust, unreasonable or discriminatory charge is declared unlawful under this section. *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

§ 43-205. People’s Counsel — Appointment, compensation, qualifications — Personnel — Duties.

* * * * *

(b) There shall be at the head of such office the People’s Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of three years. The People’s Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under section 5332 of title 5 of the United States Code or equivalent compensation pursuant to subchapter XI of chapter 3A of title 1. No person shall be appointed to the position of People’s Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People’s Counsel shall take and subscribe the same oaths as that required by the Commissioners of the Commission, including an oath or affirmative before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily ¹ interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (gg), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting the former second sentence and by adding “or equivalent compensation pursuant to subchapter XI of chapter 3A of title 1” to the end of the present second sentence of subsection (b).

Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in sections. 1-334.6, 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Cited in *Potomac Elec. Power Co. v. Public Serv. Comm'n* (D.C. 1979, 402 A.2d 14); *People's Counsel v. Public Serv. Comm'n* (D.C. 1979, 399 A.2d 43); *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

§ 43-205a. Same; Appropriations.

There are authorized to be appropriated, to carry out the purposes of this Act, such sums as may be necessary for fiscal year 1980 and for each fiscal year thereafter. (Jan. 2, 1975, Pub. L. 93-614, § 3, 88 Stat. 1977; Oct. 20, 1979, D.C. Law 3-34, § 2, 26 DCR 1119.)

Effect of Amendment.

1979 — Act Oct. 20, 1979, D.C. Law 3-34, amended section by rewriting the section.

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the People's Counsel Authorization Emergency Act of 1978 (D.C. Act 2-258, Aug. 14, 1978, 24 DCR 2011) and sec. 2 of the People's Counsel Authorization Second Emergency Act of 1978 (D.C. Act 2-304, Nov. 27, 1978, 25 DCR 5513).

1979 — For temporary amendment of section, see sec. 2 of the People's Counsel Authorization Emergency Act of 1979 (D.C. Act 3-13, Feb. 23, 1979, 25 DCR 8185); sec. 2 of

the People's Counsel Authorization Second Emergency Act of 1979 (D.C. Act 3-49, May 30, 1979, 25 DCR 10487); and sec. 2 of the People's Counsel Authorization Third Emergency Act of 1979 (D.C. Act 3-93, Aug. 27, 1979, 26 DCR 1002).

Legislative History of Law 3-34. Law 3-34 was introduced in Council and assigned Bill No. 3-70, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed by the Mayor on August 31, 1979, it was assigned Act No. 3-100 and transmitted to both Houses of Congress for its review.

§ 43-206. Employees — Expenses — Expenditures.

The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of chapters 1-10 of this title. The commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of chapters 1-10 of this title. All payments and disbursements, as provided in chapters 1-10 of this title, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by Act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95; Mar. 3, 1979, D.C. Law 2-139, § 3205 (o), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting "and to fix and pay their compensation within the appropriations provided by Congress" at the end of the first sentence.

Legislative History of Law 2-139. See note to § 1-331.1. Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-301. Public utilities — Service and facilities — Charges to be reasonable, just, and nondiscriminatory — To obey orders of Commission.

NOTES TO DECISIONS

Every unjust, unreasonable or discriminatory charge is declared unlawful under this section. *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

Not every rate variation supports claim of unlawful discrimination. — Not every variation in the rate charged for a particular service supports a claim of unlawful discrimination; so long as the classifications are reasonable, a difference in rates may exist between different classes of customers. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Factors for determining whether rates discriminatory. — In determining whether there has been discrimination within the meaning of this section, the Commission must consider whether customers have paid

different amounts for the same service under the same circumstances. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Procedural criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

§ 43-304. Proposed changes in law to be submitted to Commission — Hearings — Recommendations to Congress.

NOTES TO DECISIONS

Cited in *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

§ 43-323. Schedule of rates to be filed — Existing rates to remain in force until changed.

NOTES TO DECISIONS

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right

to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

CHAPTER 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401. Existing rates continued — Schedules to be filed — Application to change rates — Review of ruling by Court of Appeals.

NOTES TO DECISIONS

Proponent of rate order has burden of proving that the proposed rates are just and reasonable and that the expenditures relied upon as a basis for the rates are themselves reasonable. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Affiliation of utility and supplier affects Commission's scrutiny of expenditures. — When material and services are purchased by a utility on the open market, the Commission usually accepts the contract price without further inquiry, but when the utility and the supplier are affiliated close scrutiny of the price is usually required. *Atlantic Tel. Co. v. Public Serv. Comm'n* (D.C. 1978, 390 A.2d 439).

Rate of return calculation must factor in impact of nonutility transactions. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company's stock, including specific findings and conclusions as to whether and why investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Organization v. Public Serv. Comm'n* (D.C. 1978, 393 A.2d 71).

Specific finding that price cost compensatory not required. — The Commission did not have to make a specific finding that a price charged was “cost compensatory” where it found that it was sufficient to recover the utility’s research and development costs within a reasonable period of time. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside

unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedures Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

Cited in *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

§ 43-411. Reasonable rates may be ordered — Notice to be given utility affected thereby.

NOTES TO DECISIONS

Contract fixing rate does not impair commission’s revision authority. — The fact that a rate is fixed by contract between a utility and its customer does not impair the Commission’s authority to revise that rate when circumstances of public necessity so mandate. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Commission must consider impact of nonutility transactions in calculating rates of return. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company’s stock, including specific findings and conclusions as to whether and why the investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

Administrative Procedure Act (§ 1-1501 et seq.) applies to actions of the Commission. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

Criteria for setting aside or approving rate order. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

CHAPTER 6.—GAS AND ELECTRIC CORPORATIONS

§ 43-604. Excessive charges to defeat suit to collect for gas or electricity furnished.

NOTES TO DECISIONS

Application of section. — This section is directed to the situation in which a utility has charged a rate higher than that prescribed by the Public Service Commission. *District*

of Columbia v. Potomac Elec. Power Co. (D.C. 1979, 402 A.2d 430).

CHAPTER 7.—ORDERS AND COURT PROCEEDINGS

§ 43-704. Application to Court of Appeals for instructions — Application for reconsideration.

NOTES TO DECISIONS

Exclusive method of review. — Section 43-710 provides that the method of review of Public Service Commission orders set forth in this section “shall be exclusive.” *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

Cited in *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71); *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

§ 43-705. Appeal to Court of Appeals from certain orders — Precedence over other civil causes — Proceeding when additional evidence proper — Statement to accompany decision — Commission not liable for costs or damages.

NOTES TO DECISIONS

Exclusive appellate review provisions. — Section 43-710 provides that the appellate review provisions of this section “shall be exclusive.” *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

Competing telephone company was affected by rate level and therefore could raise any issue relevant to the lawfulness of the Commission’s actions. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Affected party need not be within zone of interests protected by a regulatory provision in order to challenge

agency action on that basis but instead may raise any relevant question of law in respect to an order or decision. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Administrative Procedure Act (§ 1-1501 et seq.) applies to actions of the Commission. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

Cited in *Potomac Elec. Power Co. v. Public Serv. Comm’n* (D.C. 1979, 402 A.2d 14).

§ 43-706. Appeal limited to questions of law.

NOTES TO DECISIONS

Congress vested sole ratemaking authority in the Commission. *Potomac Elec. Power Co. v. Public Serv. Comm’n* (D.C. 1979, 402 A.2d 14).

And not the Court of Appeals. — The power to make rates was clearly delegated by Congress with this section to the Commission, not to the Court of Appeals. *Potomac Elec. Power Co. v. Public Serv. Comm’n* (D.C. 1979, 402 A.2d 14).

Exclusive appellate review provisions. — Section 43-710 provides that the appellate review provisions of this section “shall be exclusive.” *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

Normal parameters of review. — A reviewing court’s function is normally exhausted when it has determined that the Commission has respected procedural requirements, has made findings based on substantial evidence and has applied the correct legal standards to its substantive deliberations. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

The scope of judicial review of the Commission’s order is limited to questions of law and to findings of fact only if they appear “unreasonable, arbitrary, or capricious.” *People’s Counsel v. Public Serv. Comm’n* (D.C. 1979, 399 A.2d 43).

If the overall impact of the rate order is just and reasonable and produces no arbitrary result, judicial

inquiry is at an end. *People’s Counsel v. Public Serv. Comm’n* (D.C. 1979, 399 A.2d 43).

Criteria for setting aside or approving rate order. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Organization v. Public Serv. Comm’n* (D.C. 1978, 393 A.2d 71).

Burden on challenger to show order unjust and unreasonable. — The burden is on the challenging party to show that a rate order is unlawful because it is unjust and unreasonable in its consequences. *Atlantic Tel. Co. v. Public Serv. Comm’n* (D.C. 1978, 390 A.2d 439).

Reversible error. — A petitioner must establish clearly and convincingly a fatal flaw in the action taken to demonstrate reversible error. *People’s Counsel v. Public Serv. Comm’n* (D.C. 1979, 399 A.2d 43).

§ 43-710. Method of review exclusive.

NOTES TO DECISIONS

Exclusive review procedures. — This section provides that the method of review of Commission orders set forth in § 43-704, and the appellate review provisions of

§§ 43-705 and 43-706 “shall be exclusive.” *District of Columbia v. Potomac Elec. Power Co.* (D.C. 1979, 402 A.2d 430).

CHAPTER 12.—GAS COMPANIES—SPECIAL ACTS

§ 43-1205. Removal of gas meters for neglect or refusal to pay amount due.

NOTES TO DECISIONS

Limited right of assaulting landowner to assert defense of property. — Where defendant asserted defense of property at his trial for assaulting a gas company collector who had attempted to remove a gas meter for failure to pay bill, the trial judge properly instructed the jury that as long as the employee's entry was nonforcible

there was no trespass and that unless the employee had departed from the legitimate purpose of his entry, the defendant was not justified in ejecting him under the guise that he was defending his property. *Jackson v. United States* (D.C. 1978, 385 A.2d 786).

CHAPTER 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

§ 43-1521a. Additional charge on unpaid water bills.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill Payment Act of 1978

(D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill Payment Act of 1978

(D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

§ 43-1521c. Lien for water charges.

NOTES TO DECISIONS

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536).

CHAPTER 16.—SANITARY SEWAGE WORKS

Subchapter I.—D.C. Sanitary Sewage Works

§ 43-1609. Additional charge for overdue bills — Enforcement of lien.

Emergency Act Amendments.

1978 — For temporary amendment of section permitting mayor to establish payment schedules for persons unable to pay their water and sanitary sewer service bills within thirty days of rendition of the bill, see secs. 2 and 3 of the Emergency Water and Sewer Bill Payment Act of 1978

(D.C. Act 2-157, Mar. 10, 1978, 24 DCR 8072); and for temporary amendment providing for additional time to pay bills, see secs. 2 and 3 of the Second Emergency Water and Sewer Bill Payment Act of 1978 (D.C. Act 2-203, June 9, 1978, 25 DCR 395).

TITLE 44.—RAILROADS AND OTHER CARRIERS

| | |
|--|--------|
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| 2. Street Railways and Bus Lines | 44-201 |

CHAPTER 2.—STREET RAILWAYS AND BUS LINES

| | |
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| Sec. | Sec. |
| 44-214.1. Subsidy agreement. | 44-216.1. Entry or exit without paying fare; entry by rear exit door. |
| 44-214.2. Fares; eligibility. | 44-217. Carrier authorized to refuse transportation to violators. |
| 44-214.3. Student fare tokens. | 44-218. Penalties. |
| 44-214.4. Student Metrorail discount cards. | |
| 44-214.5. Subsidy payments; audit. | |
| 44-214.6. Rules and regulations. | |
| 44-216. Unlawful conduct on public passenger vehicles. | |

§ 44-214a. Fares for schoolchildren not over 18 years of age — Formula for adjusting and payment of fare subsidy.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-155, Feb. 28, 1978, 24 DCR 9236); sec. 2 of the School Transit Subsidy Emergency Act of 1978 Emergency Amendment Act (D.C. Act 2-176, Apr. 13, 1978, 24 DCR 9048); sec. 2 of the School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-228, July 13, 1978, 25 DCR 1446); sec.

2 of the Fourth School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-285, Oct. 25, 1978, 25 DCR 4309); and sec. 2 of the Fifth School Transit Subsidy Emergency Act of 1978 (D.C. Act 2-331, Dec. 29, 1978, 25 DCR 7010).
Compiler's note. Section 2 of Act Mar. 6, 1979, D.C. Law 2-152, indicated that it was to extensively amend this section but the amendment was given effect by adding §§ 44-214.1 to 44-214.6.

§ 44-214.1. Subsidy agreement.

The Mayor of the District of Columbia is authorized to enter into an agreement with the Washington Metropolitan Area Transit Authority for the transportation, at reduced fares, of students going to and from public, parochial, and private schools and to and from related educational activities in the District of Columbia. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. Law 2-152 was introduced in Council and assigned Bill No. 2-293, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 11, 1978 and July 25, 1978, respectively. Signed by the Mayor on August 21, 1978, it

was assigned Act No. 2-270 and transmitted to both Houses of Congress for its review.
Short title. The first section of Act Mar. 6, 1979, D.C. Law 2-152, provided: "That this act may be cited as the 'School Transit Subsidy Act of 1978.'"

§ 44-214.2. Fares; eligibility.

- (a) The fare, to be paid by students for regular route transportation on the Metrobus Transit System within the District of Columbia, shall be ten cents (10¢) during both the peak and off-peak hours. Beginning on September 5, 1978, the fare to be paid by students for transportation on the Metrorail Transit System within the District of Columbia shall be ten cents (10¢) during both the peak and off-peak hours.
- (b) This reduced fare is valid only for transportation of students going to and from public, parochial, and private schools and to and from related educational activities in the District of Columbia.
- (c) Reduced fares for students on the Metrobus and Metrorail Transit Systems shall be available only to persons who are:
 - (1) under nineteen (19) years of age;
 - (2) residents of the District of Columbia; and
 - (3) currently enrolled in a regular course of instruction at an elementary or secondary public, parochial, or private school located in the District of Columbia.

(d) Reduced fares for students on the Metrorail Transit System shall be available only to persons who possess a valid student Metrorail discount card. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. See note to § 44-214.1.

Section referred to in sections. 44-214.3, 44-214.4.

§ 44-214.3. Student fare tokens.

(a) Student fare tokens shall be issued by the Mayor of the District of Columbia only to students who present a certification of eligibility to use the Metrobus Transit System issued by an authorized school official.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of section 44-214.2 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. See note to § 44-214.1.

§ 44-214.4. Student Metrorail discount cards.

(a) Student Metrorail discount cards shall be issued by the Mayor of the District of Columbia only to those students who: (1) present a certification of eligibility to use the Metrorail Transit System issued by an authorized school official; and (2) have a need to use the Metrorail Transit System as determined by the Mayor.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of section 44-214.2 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility.

(c) In determining need pursuant to subsection (a) (2) of this section, the Mayor shall consider appropriate indices of the student's need to use the Metrorail Transit System for transportation to and from school and related educational activities in the District of Columbia, including the proximity of the student's residence to his school, the proximity of the student's residence and school to Metrorail stations and the student's participation in city-wide education programs, work-study programs, inter-school extracurricular activities and other similar education and extracurricular activity programs.

(d) Student Metrorail discount cards shall: (1) bear the name of the student, an expiration date and such other information as the Mayor may require; (2) be displayed by the student when purchasing Metrorail student farecards; (3) be signed by the student immediately upon receipt; and (4) be nontransferable.

(e) Metrorail student farecards shall: (1) be signed by the student immediately upon purchase; and (2) be nontransferable.

(f) No person, other than the person for whose use such farecard is issued, shall use a student Metrorail farecard to ride on a Metrorail train and any such other use is hereby prohibited. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. See note to § 44-214.1.

§ 44-214.5. Subsidy payments; audit.

(a) The Washington Metropolitan Area Transit Authority shall certify to the Mayor, as soon as practicable, following the end of each calendar month:

(1) the amount that is the difference between the total of all Metrobus student fare tokens collected by the Washington Area Transit Authority during such calendar month for the transportation of students on the Metrobus Transit System times forty-five cents (45¢), or such other amount as may hereinafter be agreed to by the Mayor and the Washington Metropolitan Area Transit Authority, pursuant to a student passenger survey or other appropriate method, and the total of all such fare tokens times ten cents (10¢);

(2) The amount that is the difference between the total of all fares that would have been paid to the Washington Metropolitan Area Transit Authority during such calendar month by students for transportation on the Metrorail Transit System, if such fares had been paid at the otherwise applicable regular adult Metrorail fare for each trip made by students during that month, and the total of all money collected by the Washington Metropolitan Area Transit Authority during such calendar month in connection with the sale of Metrorail student farecards.

(b) Effective September 1, 1979, the phrase “such fare tokens” in paragraph (1) of subsection (a) is amended to read “Metrobus student fare tokens sold during such calendar month”.

(c) The Mayor, upon receiving any such certification, shall pay the Washington Metropolitan Area Transit Authority, subject to an audit acceptable to the Mayor, the amounts contained therein. The Mayor is authorized to make advance subsidy payments to the Washington Metropolitan Area Transit Authority: Provided, that the District of Columbia shall receive an appropriate interest credit from the Washington Metropolitan Area Transit Authority for each such advance payment; and provided further, that the exercise of such authority shall not affect the certification and audit requirements. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. See note to
§ 44-214.1.

§ 44-214.6. Rules and regulations.

The Mayor shall promulgate rules and regulations necessary to carry out sections 44-214.1 to 44-214.6, including rules and regulations relating to the maximum number of Metrobus student fare tokens and Metrorail student farecards that may be purchased by an eligible student at any one time or during a specific period of time, and relating to the use of fare tokens and farecards for the transportation of students going to and from school programs and related activities held in the District of Columbia on weekends and holidays. (Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative History of Law 2-152. See note to
§ 44-214.1.

§ 44-216. Unlawful conduct on public passenger vehicles.

It is unlawful for any person either while aboard a public passenger vehicle with a capacity for seating twelve (12) or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers in regular route service within the corporate limits of the District of Columbia; or while aboard a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or while within a rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia to:

- (1) smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (2) consume food or drink;
- (3) spit;
- (4) discard litter;
- (5) play any radio, cassette, recorder, musical instrument or other such device, unless it is connected to an earphone that limits the sound to the individual user;

(6) carry any flammable or combustible liquids, live animals, explosives, acids or any other item inherently dangerous or offensive to others, except for seeing eye dogs properly harnessed and accompanied by a blind passenger and for small animals properly packaged; or

(7) stand in front of the white line marked on the forward end of the floor of any bus or otherwise conduct himself in such a manner as to obstruct the vision of the operator.

(Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344).

Effect of Amendment.

1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section generally.

Legislative History of Law 2-40. Law 2-40 was introduced in Council and assigned Bill No. 2-121, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and

second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on October 25, 1977, it was assigned Act No. 2-92 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 6-821, 44-217.

§ 44-216.1. Entry or exit without paying fare; entry by rear exit door.

No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier. (Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344).

Legislative History of Law 2-40. See note to § 44-216.

Section referred to in sections. 44-217, 44-218.

§ 44-217. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or behavior would constitute a violation of section 44-216 or 44-216.1. (Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Effect of Amendment.

1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section by changing "section 44-216" to "section 44-216 or

44-216.1" and by changing § 3 of D.C. Law 1-18 in the historical citation to the section to § 4.

Legislative History of Law 2-40. See note to § 44-216.

§ 44-218. Penalties.

Violation of section 44-216 shall be punishable by a fine of not less than ten nor more than fifty dollars for a first offense and by a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days or both for each second or subsequent offense. A violation of section 44-216.1 shall be punishable by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than ten (10) days or both. (Sept. 23, 1975, D.C. Law 1-18, § 5, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Effect of Amendment.

1978 — Act Feb. 22, 1978, D.C. Law 2-40, amended section by deleting the word “find” and inserting the word “fine,” deleting the words “; and not less than fifty nor more than one hundred dollars or ten days in jail,” and inserting in lieu thereof the words “and by a fine of not less than fifty dollars (\$50) nor more than one hundred

dollars (\$100) or by imprisonment for not more than ten (10) days,” adding the last sentence and by changing § 4 of D.C. Law 1-18 in the historical citation to the section to § 5.

Legislative History of Law 2-40. See note to § 44-216.

TITLE 45.—REAL PROPERTY

Cross references. For tax relief for residential property, see § 47-659 et seq. For residential real property transfers, see § 47-3301 et seq.

| Chap. | Sec. |
|--|---------|
| 3. Forms — Covenants and Warranties | 45-301 |
| 6. Mortgages and Deeds of Trust | 45-601 |
| 7. Recorder of Deeds | 45-701 |
| 8. Estates in Land | 45-801 |
| 9. Landlord and Tenant | 45-901 |
| 14. Real Estate and Business Brokers' Licenses | 45-1401 |
| 16. Rent Control | 45-1601 |
| 18. Home Purchase Assistance Fund | 45-1901 |
| 19. Housing Finance Agency | 45-1901 |

CHAPTER 3.—FORMS—COVENANTS AND WARRANTIES

§ 45-301. Forms of instruments.

NOTES TO DECISIONS

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| <p>Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within</p> | <p>the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. <i>Simpson v. Jack Spicer Real Estate, Inc.</i> (D.C. 1978, 396 A.2d 212).</p> |
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CHAPTER 6.—MORTGAGES AND DEEDS OF TRUST

§ 45-603. Estate of mortgagee or trustee conveyed.

NOTES TO DECISIONS

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| <p>Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within</p> | <p>the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. <i>Simpson v. Jack Spicer Real Estate, Inc.</i> (D.C. 1978, 396 A.2d 212).</p> |
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§ 45-615. Terms of sale and notice to be given.

NOTES TO DECISIONS

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| <p>Veterans Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment. — Fact that loan was secured under a program administered by the Veterans Administration was not sufficient to bring nonjudicial foreclosure and sale within</p> | <p>the Fifth Amendment, because the primary transaction was between private parties and the V.A.'s participation and importance was minimal. <i>Simpson v. Jack Spicer Real Estate, Inc.</i> (D.C. 1978, 396 A.2d 212).</p> |
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CHAPTER 7.—RECORDER OF DEEDS

| Subchapter I. — Appointment and Functions of Recorder | Sec. |
|---|---|
| Sec. | 45-725. Investigation by Mayor to determine correctness of returns — Production of books and records — Examination of witnesses — Service of summons — Compelling attendance — Punishment for disobedience. |
| 45-702. Deputy recorder — Duties. | |
| 45-703. Second deputy — His duties and powers. | |
| Subchapter II.—Recordation Tax on Deeds | |
| 45-723. Imposition of tax — Rate — Returns — Liability for tax. | |

Subchapter I. — Appointment and Functions of Recorder

§ 45-702. Deputy recorder — Duties.

The Mayor of the District of Columbia is authorized to appoint a deputy recorder of deeds, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549; June 9, 1952, 66 Stat. 129, ch. 373, § 2; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 3; Mar. 3, 1979, D.C. Law 2-139, § 3205 (uu), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “The Mayor of the District of Columbia is authorized to appoint a deputy recorder of deeds” for “The Commissioner of the District of Columbia is authorized to appoint a deputy recorder of deeds in accordance with the civil-service law and regulations and to fix his compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters].”
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 45-703. Second deputy — His duties and powers.

The Mayor of the District of Columbia is authorized to appoint a second deputy recorder of deeds. The second deputy recorder may do and perform any and all acts which the Recorder is authorized to do, and all such acts by the second deputy recorder shall have the same legality, force, and effect as if performed by the Recorder. (Mar. 3, 1925, 43 Stat. 1102, ch. 416; June 9, 1952, 66 Stat. 129, ch. 373, § 3; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 4; Mar. 3, 1979, D.C. Law 2-139, § 3205 (vv), 25 DCR 5740.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section, in the first sentence, by substituting “Mayor” for “Commissioner” and by deleting “in accordance with the civil-service laws and regulations and to fix his compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” at the end of the sentence, and by deleting the former last two sentences.
Legislative History of Law 2-139. See note to § 1-331.1.
Section referred to in section. 1-366.1.
Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Subchapter II.—Recordation Tax On Deeds

§ 45-723. Imposition of tax — Rate — Returns — Liability for tax.

* * * * *

(b) Each such deed shall be accompanied by a return under oath in such form as the Mayor may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed, the amount of tax payable, whether the property to which the deed or document refers is a residential real property as defined in section 47-3301, and such other information as the

Mayor may require so as to provide an accurate and complete public record of each transfer of residential real property.

* * * * *

(As amended July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765.)

Effect of Amendment.

1978—Act July 13, 1978, D.C. Law 2-91, amended section by deleting “and such other information as the Commissioner may require” from subsection (b) and by inserting the phrase following the word “payable” in subsection (b).

Legislative History of Law 2-91. See note to § 47-3301.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-3301.

§ 45-725. Investigation by Mayor to determine correctness of returns — Production of books and records — Examination of witnesses — Service of summons — Compelling attendance — Punishment for disobedience.

The Mayor, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to any provision of this subchapter or pursuant to any regulations of the Council of the District of Columbia promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, or for the purposes of ascertaining whether a deed or other document was required to be recorded pursuant to section 47-3313, is authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Mayor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons as herein provided then, and in that event, the Mayor may report that fact to the Superior Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Mayor or any person designated by him of any such books, papers, or memorandums, or who shall obstruct or hinder the Mayor or any person designated by him in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 305; July 29, 1970, Pub. L. 91-358, title I, § 155(c)(41), 84 Stat. 572; July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765.)

Effect of Amendment.

1978—Act July 13, 1978, D.C. Law 2-91, amended section by inserting “or for the purposes of ascertaining whether a deed or other document was required to be recorded pursuant to section 47-3313,” in the first sentence.

Legislative History of Law 2-91. See note to § 47-3301.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of

Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-728. Deficiencies in tax — Notice of determination — Protests — Hearings — Time for payment.

Section referred to in section. 47-3315.

CHAPTER 8.—ESTATES IN LAND

§ 45-820. Estates by sufferance.

NOTES TO DECISIONS

Tenant by sufferance created. — When a tenant remains in the building after the expiration of the lease and continues to pay the rent, he becomes by operation of

statute a tenant by sufferance. *Oliver T. Carr Mgt., Inc. v. National Delicatessen, Inc.* (D.C. 1979, 397 A.2d 914).

§ 45-822. Estates at will — When terminated.

NOTES TO DECISIONS

Meaning of “tenant” at common law. — A tenant at common law holds or possesses lands by any kind of right or title. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, A.2d 212).

Section did not entitle mortgagor holding over after foreclosure to protections afforded renters from

evictions by their landlords under the Rental Accommodations Act of 1975 (now repealed) because the statutes were not in pari materia and the term “tenant” is not defined consistently throughout the District of Columbia Code. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

CHAPTER 9.—LANDLORD AND TENANT

§ 45-904. Tenancy by sufferance — When terminated.

NOTES TO DECISIONS

Cited in *Oliver T. Carr Mgt., Inc. v. National Delicatessen, Inc.* (D.C. 1979, 397 A.2d 914).

§ 45-910. Ejectment or summary proceedings.

NOTES TO DECISIONS

Landlord-tenant relationship is jurisdictional under this section. *Pollock v. Brown* (D.C. 1978, 395 A.2d 50).

Effect of statutory procedures on landlord and tenant rights. — The landlord’s common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, who has a right not to have his or her possession interfered with except by lawful process; and violation of the tenant’s right gives rise to a cause of action in tort. *Mendes v. Johnson* (D.C. 1978, 389 A.2d 781).

Retaliatory eviction available to tenant as shield but not sword. — Retaliatory eviction is a valid defense to a landlord’s action for possession, but there is in this jurisdiction no independent cause of action by a tenant against a landlord based on an unsuccessful retaliatory eviction suit. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).

Tenant’s action for malicious prosecution. — Where a landlord’s two unsuccessful suits for possession were brought with malice and without probable cause, the tenant would have action for malicious prosecution on the ground of special injury. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).

Not necessarily barred because landlord’s suit resulted in payment of rent. — A landlord’s suit for possession for the nonpayment of rent, resulting in payment of rent, may be considered successful and a bar to a subsequent action for malicious prosecution only if the landlord had made an unsuccessful good faith attempt to secure payment prior to the filing of his suit for possession. *Weisman v. Middleton* (D.C. 1978, 390 A.2d 996).

§ 45-911. Arrears of rent and double rent.

NOTES TO DECISIONS

Landlord-tenant relationship is jurisdictional under this section. *Pollock v. Brown* (D.C. 1978, 395 A.2d 50).

CHAPTER 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

Sec.

45-1403. Real Estate Commission created — Membership
— Seal — Records — Compensation.

§ 45-1402. Definitions — Exceptions.

Section referred to in section. 47-3316.

NOTES TO DECISIONS

One who manages property without compensation is not a broker within the meaning of this section. *Clay v. Green* (D.C. 1979, 404 A.2d 959).

§ 45-1403. Real Estate Commission created — Membership — Seal — Records — Compensation.

There is hereby created the Real Estate Commission of the District of Columbia. The Commissioner of the District of Columbia shall appoint two persons, not more than one of whom shall have been actively engaged in or closely connected with the business or vocation of real-estate broker or real-estate salesman within five years immediately prior to appointment, who shall serve as members of said Real Estate Commission of the District of Columbia. In addition thereto, the assessor of the District of Columbia shall serve, ex-officio, as a member of said Real Estate Commission but without added compensation for his services as such. One member of said Commission shall be appointed for a term of one year; one member shall be appointed for a term of two years, and until their successors are appointed and qualified; thereafter the term of the members of said Commission shall be for three years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term. The Commissioner of the District of Columbia may remove members of the Real Estate Commission at any time for cause.

The assessor, ex-officio, shall be the chairman of said Real Estate Commission, which is hereby authorized and empowered to elect a treasurer of said Commission and to do all things necessary and convenient for carrying into effect the provisions of this chapter and the rules and regulations promulgated from time to time by the Commissioners.

The Commissioner of the District of Columbia shall employ and remove at his pleasure a secretary and such assistants as shall be deemed necessary to discharge the duties imposed by the provisions of this chapter and shall prescribe their duties and fix their compensation.

The Commissioner of the District of Columbia shall provide for the use of the Real Estate Commission such office space, furniture, stationery, fuel, light, and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this chapter.

The District of Columbia Council shall adopt a seal with such design as it may prescribe engraved thereon by which the Commission shall authenticate its proceedings. Copies of all records and papers in the office of the Commission, duly certified and authenticated by the seal of said Commission, shall be received in evidence in all courts equally and with like effect as the original. The Commission shall keep a record of all its proceedings and a complete stenographic record of all hearings authorized under this chapter.

All records kept in the office of the Commission under authority of this chapter shall be open to public inspection under reasonable rules and regulations to be prescribed by the Commission.

The compensation of members of the Commission, except the ex officio member, shall be \$10 each for personal attendance at each meeting, but shall not exceed for any member \$1,500 per annum.

The payment of such allowance shall be made from any unexpended balance in the treasury of said Commission remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such allowance the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total receipts; and if at the close of each fiscal year any funds unexpended in excess of the sum of \$1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia: Provided, that no expenses incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia.

All fees and charges payable under the provisions of this chapter shall be paid to the treasurer of the Commission. The Commission is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission at the end of each fiscal year and make a report thereof in writing to the Commissioner of the District of Columbia. The said auditor shall have free access to all books of accounts, papers, and records of the said Commission.

The District of Columbia Council is hereby authorized and empowered to make and enforce, revise, or repeal whatever reasonable regulations may be necessary to carry out the provisions of this chapter. (Aug. 25, 1937, 50 Stat. 788, ch. 760, § 3; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 4; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(p), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting "in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" at the end of the third paragraph.

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 45-1407. Details relating to license.

NOTES TO DECISIONS

One who manages property without compensation is not a broker within the meaning of this section. *Clay v. Green* (D.C. 1979, 404 A.2d 959).

§ 45-1408. Suspension or revocation of license — Causes enumerated.

Section referred to in section. 47-3322.

§ 45-1409. Hearing before suspension — Court review — Appeal.

Section referred to in section. 47-3323.

§ 45-1410. Provisions applicable to nonresident brokers and salesmen.

Section referred to in section. 47-3321.

§ 45-1416. Penalties — Prosecutions.

Section referred to in section. 47-3326.

CHAPTER 16.—RENT CONTROL**Subchapter III.—Rental Accommodations Act of 1975**

Sec.
45-1631 to 45-1674. Repealed.

Subchapter IV.—Rental Housing Act of 1977**Title I.—Definitions**

45-1681. Definitions.

Title II.—Rent Stabilization Program

- 45-1682. Continuation of Commission; qualifications.
- 45-1683. Duties of the Commission.
- 45-1684. Rental Accommodations Office.
- 45-1685. Duties of the Rent Administrator.
- 45-1686. Registration and coverage.
- 45-1687. Rent ceiling.
- 45-1688. Adjustments in the rent ceiling.
- 45-1689. Qualifications for increases above the base rent.
- 45-1690. Rent ceiling upon termination of exemption for newly-covered rental units.
- 45-1691. Capital improvements.
- 45-1692. Services and facilities.
- 45-1693. Hardship petition.
- 45-1694. Vacant accommodation.
- 45-1695. Adjustment procedure.
- 45-1696. Security deposit.
- 45-1697. Judicial review.

Title III.—Rental Supplement Program

- 45-1698. Eligibility.
- 45-1699. Rental supplement grants.
- 45-1699.1. Administration.
- 45-1699.2. Continued eligibility.
- 45-1699.3. Termination of eligibility.
- 45-1699.4. Tax exemption.

Title IV.—Revenue

- 45-1699.5. Annual rental unit fee.

Title V.—Evictions and Retaliatory Action

- 45-1699.6. Evictions.

Sec.

- 45-1699.7. Retaliatory action.

Title VI.—Sale of Rental Housing

- 45-1699.8. Sale of single-family housing accommodations.
- 45-1699.9. Sale of housing accommodations comprised of two or more rental units.
- 45-1699.10. Conversion of a housing accommodation to a cooperative.
- 45-1699.11. Conversion of a housing accommodation to another use.

Title VII.—Substantial Rehabilitation of Housing Accommodations from Which a Tenant Was Evicted.

- 45-1699.12. Applicability of provisions.
- 45-1699.13. Petition for adjustment in rent ceiling due to substantial rehabilitation.
- 45-1699.14. Criteria for approving petition.
- 45-1699.15. Amount of adjustment in rent ceiling for substantial rehabilitation.
- 45-1699.16. Notice of intent to substantially rehabilitate.
- 45-1699.17. Notice to vacate for substantial rehabilitation.
- 45-1699.18. Tenant's right to re-rent.

Title VIII.—Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance

- 45-1699.19. Notice of right to relocation assistance.
- 45-1699.20. Eligibility requirements for relocation assistance.
- 45-1699.21. Relocation assistance payments.
- 45-1699.22. Relocation advisory services.
- 45-1699.23. Tenant hot line.

Title IX.—Miscellaneous Penalties; Severability; Supersedence; Service; Effective Date; Termination

- 45-1699.24. Penalties.
- 45-1699.25. Severability.
- 45-1699.26. Service.
- 45-1699.27. Termination.

Subchapter III.—Rental Accommodations Act of 1975

§§ 45-1631 to 45-1674. Repealed. Mar. 16, 1978, D.C. Law 2-54, § 903, 24 DCR 5334.

Legislative History of Law 2-54. See note to § 45-1681.

Subchapter IV.—Rental Housing Act of 1977**Title I. — Definitions****§ 45-1681. Definitions.**

For the purposes of this subchapter:

(a) The term "base rent" means that rent legally charged or chargeable on October 31, 1977 for the rental unit which shall be the sum of rent charged on February 1, 1973 and all rent

increases authorized for that rental unit by prior rent control laws or any administrative decision issued thereunder, or any rent increases authorized by a court of competent jurisdiction.

(b) The term "capital improvement" means an improvement or renovation other than ordinary repair, replacement or maintenance, the use of which continues beyond the twelve (12) month period beginning on the date of completion of such capital improvement.

(c) The term "Commission" means the Rental Accommodations Commission as continued by title II of this subchapter.

(d) The term "Council" means the Council of the District of Columbia as established by section 1-141.

(e) The term "D.C. Law 1-33" means the "District of Columbia Rental Accommodations Act of 1975", as amended.

(f) The term "housing accommodations" means any structure or building in the District of Columbia containing one (1) or more rental units and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least sixty percent (60%) of the rooms devoted to living quarters for tenants or guests are used for transient occupancy. For the purposes of this subchapter, a rental unit shall be deemed to be used for transient occupancy if the landlord thereof is subject to and pays the sales tax imposed by section 47-2601 (14) (a) (3).

(g) The term "Housing Regulations" means the most recent edition of the Housing Regulations of the District of Columbia as established by the Commissioner's Order dated August 11, 1955 (C.O. No. 55-1503).

(h) The term "initial leasing period" means that period for which the first tenant of a rental unit rents such rental unit. For rental units described in section 45-1686 (a) (2), the first tenant is the tenant who rents such rental unit immediately following the issuance of the certificate of occupancy. For units described in section 45-1690, the first tenant is the tenant who rents such rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this subchapter.

(i) The term "landlord" means an owner, lessor, sublessor, assignee, any agent thereof or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District of Columbia.

(j) The term "management fee" means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the landlord: Provided, that the duties of such personnel are connected with the operation of the housing accommodation.

(k) The term "market value" means the most recently assessed value of the housing accommodation as determined by the Mayor for real property tax purposes.

(l) The term "maximum possible rental income" means the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the consecutive twelve (12) months immediately preceding the date of any filing required or permitted under this subchapter.

(m) The term "Mayor" means the Office of the Mayor of the District of Columbia as established under section 1-161.

(n) The term "Office" means the Rental Accommodations Office as provided in section 45-1684 (a).

(o) The term "operating expenses" means the expenses required for the operation of a housing accommodation for the consecutive twelve (12) month period immediately preceding the date of its use in any computation required by any provision of this subchapter, including but not limited to expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(p) The term "other income which is derived from the housing accommodation" means any income, other than gross rents, which a landlord earns because of his or her ownership of a housing accommodation, including but not limited to fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

(q) The term "person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals and their respective successors and assignees.

(r) The term “property taxes” means the amount levied by the government of the District of Columbia for real property tax on a housing accommodation during a tax year.

(s) The term “related facility” means any facility, furnishing, or equipment made available to a tenant by a landlord, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, and the common use of any common room, yard or other common area.

(t) The term “related services” means services provided by a landlord, or required by law or by the terms of a rental agreement to be provided by a landlord, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air-conditioning, telephone answering and elevator services, janitorial services, and the removal of trash and refuse.

(u) The term “rent” means the entire amount of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a landlord as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(v) The term “rent ceiling” means that amount defined in or computed under section 45-1687.

(w) The term “rental unit” means any part of a housing accommodation as defined in subsection (f) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house (the land appurtenant thereto), and suite of rooms or duplex.

(x) The term “substantial rehabilitation” means any improvement to or renovation of a housing accommodation for which: (1) the building permit was granted on or after February 1, 1973; and (2) the total expenditure for the improvement or renovation equals or exceeds fifty percent (50%) of the market value of the housing accommodation before such rehabilitation.

(y) The term “tenant” includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or the benefits thereof, of any rental unit owned by another person.

(z) The term “uncollected rent” means the amount of rent(s) and other charges due for at least thirty (30) days but not received from tenants at the time any statement, form or petition is filed pursuant to this subchapter.

(aa) The term “vacancy loss” means the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included therein for units occupied by a landlord or his or her employees or otherwise not offered for rent.

(bb) The term “substantial violation” means the presence of any housing condition, the existence of which, violates the District of Columbia Housing Regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

(Mar. 16, 1978, D.C. Law 2-54, § 102, 24 DCR 5334.)

Legislative History of Law 2-54. Law 2-54 was introduced in Council and assigned Bill No. 2-152, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 15, 1977 and November 29, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-118 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Mar. 16, 1977, D.C. Law 2-54, 24 DCR 5334, provided “That this act may be cited as the ‘Rental Housing Act of 1977.’ ”

Section referred to in sections. 45-1690, 45-1699.11.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Contractual relationship between landlord and tenant. — A tenant under former renters’ statute stood in a contractual relationship with his landlord. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

Mortgagor holding over after foreclosure not entitled to protections afforded renters. — A tenancy arising

from mere possession was held not within scope of former rent control statute, and thus mortgagor holding over after foreclosure was not entitled to statutory protections afforded renters. *Simpson v. Jack Spicer Real Estate, Inc.* (D.C. 1978, 396 A.2d 212).

Title II.—Rent Stabilization Program

§ 45-1682. Continuation of Commission; qualifications.

(a) The District of Columbia Rental Accommodations Commission (hereinafter referred to as the "Commission") as established under section 45-1631 (a) is continued and shall be composed of nine (9) members appointed by the Mayor by and with the advice and consent of the Council. Members appointed to the Commission under this subchapter shall each serve a two (2) year term. Three (3) members of the Commission shall represent the interests of landlords, and each of the three (3) shall be a landlord of at least one (1) housing accommodation located in the District of Columbia. Three (3) members of the Commission shall be tenants who shall represent the interests of tenants, and three (3) members of the Commission shall be neither landlords nor tenants. All of the members of the Commission shall be residents of the District of Columbia and shall be members of no more than one (1) other District of Columbia Board or Commission.

(b) Individuals serving on the Commission on the effective date of this subchapter shall remain in office until their successors are duly sworn into office. Members of the Commission presently serving shall be eligible for reappointment.

(c) The Mayor shall have the authority to remove any member from the Commission who fails to maintain the qualifications of a member or who fails to attend seventy percent (70%) of the regularly scheduled Commission meetings held within any six (6) month period.

(d) Any member who holds no other salaried public position shall receive compensation at the rate of fifty dollars (\$50.00) for each day such member is engaged in the actual performance of duties vested in the Commission: Provided, that no member shall receive more than five thousand and four hundred dollars (\$5,400.00) under this subsection in any one (1) calendar year.

(e) Five (5) members of the Commission shall constitute a quorum for the purpose of transacting business: Provided, that one of the five (5) members is a landlord, one (1) is a tenant, and one (1) is neither a tenant nor a landlord. The Commission is authorized to delegate to any panel of three (3) or more members any appellate function which it may itself exercise: Provided, that such panels are constituted with one (1) tenant, one (1) landlord, and one (1) who is neither a tenant nor a landlord.

(f) The Commission shall choose annually, from among its members who are neither tenants nor landlords, a Chairperson and Vice Chairperson. The Commission may choose from its membership such other officers as it deems necessary. (Mar. 16, 1978, D.C. Law 2-54, § 201, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1683. Duties of the Commission.

(a) The Commission shall:

(1) promulgate, amend, and rescind rules and procedures for the administration of this subchapter; and

(2) decide appeals brought to it from decisions of the Rent Administrator.

(b) The Commission and the Rent Administrator shall collect and report data on the effects that the provisions of this subchapter have on the price, quantity and quality of rental housing in the District of Columbia.

(c) The Commission, with the assistance of the Rental Accommodations Office, shall report to the Council annually on the fiscal year basis utilized by the government of the District of Columbia, not later than November 15 of each year. This report shall cover the preceding twelve (12) months, except that the report to be filed November 15, 1978 will cover the period from March 21, 1977. The first report shall include any changes in operating costs occurring during the period from the last report, and any known court mandated future rent increases. The annual report shall include the number of hardship petitions filed and the number of hardship petitions granted. This information shall be broken down by ward and shall indicate whether the affected

housing accommodations are single-family (comprising one rental unit), flat (comprising four or less rental units), or multi-family (comprising four or more rental units). Further, the report shall include findings with respect to, but not limited to, taxes, fees and permits; water and sewer service charges; heating oil; electricity; natural gas; building maintenance; contracted services, including parts and supplies; payroll costs; repair costs; insurance; management fees; and general administrative costs. To the extent possible, the report shall also address the quantity, quality and price of the rental housing stock in the District of Columbia and any effect the provisions of this subchapter may have had thereon as demonstrated by statistical evidence. Findings included in the Commission's report shall be based in part on testimony presented by both landlords and tenants given at public hearings. Such other documentation and analysis as may be required to support the Commission's findings shall also be included.

(d) Based on the findings made by the Commission for the report required by subsection (c) of this section the Commission shall, as a part of such report, make the determination authorized by section 45-1687 (c) and may make recommendations to the Council for legislative action.

(e) (1) The Commission may hold such hearings, sit and act at such times and places within the District of Columbia, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers and documents as the Commission may deem advisable in carrying out its functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (e) (1) of this section by any person who resides, is found or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the written request of the Commission, shall have jurisdiction to issue the person an order requiring the person to appear before the Commission, there to produce evidence if so ordered or there to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that court as contempt thereof.

(f) Upon the written request of the Chairperson of the Commission, each department or entity of the government of the District of Columbia is authorized to furnish directly to the Commission such assistance and information, as may be necessary for the Commission to effectively carry out this subchapter. (Mar. 16, 1978, D.C. Law 2-54, § 202, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1685, 45-1687.

§ 45-1684. Rental Accommodations Office.

(a) There is hereby continued as an agency of the government of the District of Columbia, within the Executive Office of the Mayor, a Rental Accommodations Office which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall possess experience of a technical nature in landlord-tenant affairs or in a field directly related thereto, shall be a resident of the District of Columbia and shall be entitled to receive annual compensation (payable in regular installments) at the rate of grade 15 of the General Schedule under section 5332 of title 5 of the United States Code. (Mar. 16, 1978, D.C. Law 2-54, § 203, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1681.

§ 45-1685. Duties of the Rent Administrator.

(a) The Rent Administrator shall carry out, according to rules and procedures established by the Commission under section 45-1683 (a) (1), the rent stabilization program established under title II of this subchapter and shall perform such other duties as may be necessary, appropriate and consistent with the provisions of this subchapter.

(b) The Rent Administrator or his or her designee shall have jurisdiction over those complaints and petitions arising under titles II, V, VI and VII of this subchapter which may be disposed of through administrative proceedings.

(c) The Rent Administrator shall propose an annual budget and recommend such staff as will enable the Office and the Commission to carry out the appropriate provisions of this subchapter.

(d) (1) The Rent Administrator may employ, with such funds as may be available to the Rent Administrator, such personnel and consultants, including hearing examiners and legal counsel, as are necessary to carry out the provisions of this subchapter.

(2) In accordance with the regulations promulgated by the Commission, the Rent Administrator may delegate authority to those employees appointed in conformity with subsection (d) (1) of this section. Such authority may include, but is not limited to hearing administrative petitions filed or initiated under this subchapter, issuing those decisions and rendering final orders on any petition heard by the employee.

(e) The Rent Administrator shall assist and provide staff support to the Commission in the preparation of the annual report required by section 45-1683 (c).

(f) The Rent Administrator or his or her designee shall attend all meetings of the Commission, and shall make available to the Commission such books, reports, and data collected and whatever staff support the Commission may require in order to effectively carry out its duties under this subchapter.

(g) (1) The Rent Administrator shall have the power to hold hearings, sit and act at those times and places within the District of Columbia, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers and documents as the Rent Administrator may deem necessary in carrying out his or her functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (g) (1) of this section by any person who resides, is found, or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the written request of the Rent Administrator, shall have jurisdiction to issue to such person an order requiring such person to appear before the Rent Administrator, there to produce evidence if so ordered, or there to give testimony touching upon the matter under inquiry. Any failure of such person to obey any order of the Superior Court of the District of Columbia may be punished by that court as contempt thereof.

(h) Upon the written request of the Rent Administrator, each department or entity of the government of the District of Columbia is authorized to furnish directly to the Rent Administrator such assistance and information as may be necessary to effectively discharge the functions required under this subchapter.

(i) The Rent Administrator shall publish within sixty (60) days after the effective date of this subchapter a booklet or other such written material describing tenants' and landlords' rights, obligations, and procedures pursuant to this subchapter. This material shall be distributed through the District of Columbia libraries and other District of Columbia offices in which the public has frequent contact and at the office of any community organization which requests to distribute such material. (Mar. 16, 1978, D.C. Law 2-54, § 204, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1686. Registration and coverage.

Section 45-1686 (d) through section 45-1697 (except section 45-1696) shall apply to each rental unit in the District of Columbia except:

(1) any rental unit in any federally or District owned housing accommodation; or in any housing accommodation with respect to which the mortgage or rent is federally or District subsidized except units subsidized pursuant to title III of this subchapter;

(2) any rental unit in a housing accommodation for which the initial certificate of occupancy was issued after February 2, 1973, but such exclusion shall be effective only during the length of the initial leasing period or for the first year of tenancy, whichever is shorter;

(3) any rental unit in any newly-constructed housing accommodation for which the building permit was issued on or after January 1, 1976: Provided, however, that this exemption shall not apply to any housing accommodation, the construction of which required the demolition of any housing accommodation subject to this subchapter, unless the number of newly-constructed rental units exceeds the number of demolished rental units;

(4) any rental unit in any housing accommodation of four (4) or fewer units, including any aggregate of four (4) units whether within the same structure or not: Provided, that:

(A) such housing accommodation is owned by not more than four (4) natural persons;

(B) none of such owners has an interest either directly or indirectly, in any other rental unit in the District of Columbia; and

(C) the owner(s) of such housing accommodation shall file with the Rent Administrator a claim of exemption statement which shall consist of an oath or affirmation by such owner(s) of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest (direct or indirect) in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the owner's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within thirty (30) days of such change;

(5) any housing accommodation which has been continuously vacant and not subject to a rental agreement for a period of at least six (6) months: Provided, that January 1, 1977 falls within such six (6) month period and that such housing accommodation has not been rented or offered for rent since the beginning of the required vacancy period of at least six (6) months, and: Provided, further, that upon re-rental such housing accommodation is in substantial compliance with the Housing Regulations when offered for rent.

(b) Prior to the execution of a lease or other rental agreement after the effective date of this subchapter, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising him or her that rent increases for the accommodation are not regulated by the Rent Stabilization Program.

(c) This subchapter shall not apply to the following rental units:

(1) any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including, but not limited to hospitals, convalescent homes, nursing homes, and personal care homes;

(2) any dormitory of an institution of higher education or of a private boarding school in which rooms are provided for students.

(d) Within not more than ninety (90) days following the effective date of this subchapter, each landlord of any rental unit not exempted by this subchapter shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District of Columbia for which he or she is receiving rent or is entitled to receive rent. The registration form shall contain, but not be limited to:

(1) for each accommodation requiring a housing business license, the date(s) and number(s) of that housing business license and the certificates of occupancy, where required by law, issued by the government of the District of Columbia, and a copy of each license and certificate;

(2) for each accommodation not required to obtain a housing business license, the information contained therein and the date and number of the certificates of occupancy issued by the government of the District of Columbia, and a copy of each certificate;

(3) the base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges therefor;

(4) the number of bedrooms in the housing accommodation;

(5) a list of any outstanding violations of the housing code applicable to such accommodation, or an affidavit that there are no known outstanding violations; and

(6) the rate of return for the housing accommodation and the computations made by the landlord to arrive at such rate of return by application of the formula provided in section 45-1693.

(e) An amended registration statement shall be filed by each registrant under this law, within thirty (30) days of any event which changes or substantially affects the rents, services, facilities or the ownership or management of any rental unit in a registered housing accommodation:

Provided, that no such amended registration statement shall be required for a change in rent pursuant to section 45-1687.

(f) Each registration statement filed under this section shall be available for public inspection at the Office, and each landlord shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which such registration statement applies: Provided, that each landlord may, in lieu of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of such housing accommodation a duplicate of the registration statement.

(g) Each registration statement filed under this section which meets the minimum requirements established by this subchapter and by the rules of procedure of the Commission, shall be assigned a registration number.

(h) Each certificate of occupancy and each housing business license issued to any landlord in the District of Columbia after the effective date of this subchapter shall contain the registration number of the housing accommodation to which such certificate or license applies. (Mar. 16, 1978, D.C. Law 2-54, § 205, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1681, 45-1687, 45-1689, 45-1690, 45-1694.

§ 45-1687. Rent ceiling.

(a) Except to the extent provided in subsection (b) of this section, no landlord of any rental unit subject to this subchapter may charge or collect rent for such rental unit in excess of the amount computed by adding to the base rent not more than one (1) of the following percentages, whichever is applicable:

- (1) two percent (2%), if the rent covers the cost of no fuel or utilities;
- (2) seven percent (7%), if the rent covers the cost of heat and hot water;
- (3) eight percent (8%), if the rent covers the cost of heat, hot water and general purpose electricity, but does not cover air-conditioning and other cooking fuel;
- (4) nine percent (9%), if the rent covers the cost of heat, hot water, general purpose electricity, and other cooking fuel but does not cover air-conditioning; or
- (5) ten percent (10%), if the rent covers the cost of heat, hot water, general purpose electricity, other cooking fuel and air-conditioning.

(b) The Commission is authorized by this section to determine at the time it makes the annual report pursuant to section 45-1683 (c) whether there shall be adjustment of general applicability in the rent ceilings established by subsection (a) of this section. If the Commission determines that such adjustments are warranted, the Commission shall also determine the manner in which such adjustments are to be made and the percentage amount of the adjustment: Provided, that the percentage does not exceed the rate of change in the Consumer Price Index in the preceding twelve (12) months. In making this determination, the Commission shall consider the operating cost ratio, which is computed by dividing the average operating expenses of all housing accommodations by the average rental income of all housing accommodations. The Commission may use the landlord registration statements filed under section 45-1686 (d) and section 202 of the Rental Accommodations Act of 1975 (former D.C. Code, sec. 45-1642) in ascertaining this ratio. The Commission may use scientifically based random samples in ascertaining this ratio. The Commission may contract with a private agency or other government agency to ascertain this ratio. If such a determination is made, a landlord may implement this adjustment in the rent ceiling for a rental unit covered by title II of this subchapter only after twelve (12) consecutive calendar months have elapsed since the effective date of an adjustment in the rent ceiling for that rental unit permitted by subsection (a) of this section.

(c) At the landlord's election, in lieu of any adjustment authorized by subsections (a) and (b) of this section, the rent ceiling for an accommodation may be adjusted through a hardship petition pursuant to section 45-1693. Such a petition shall be clearly identified as an election in lieu of the general adjustments authorized by subsections (a) and (b) of this section. The Rent

Administrator shall accord an expedited review process for such petitions and shall issue and publish a final decision within ninety (90) days after the petition has been filed. In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator or his designee at the end of ninety (90) days from the date of filing thereof (and as to which the landlord is not in default in complying with any information request made under section 45-1695 (c)), the rent ceiling adjustment requested in the petition may be conditionally implemented by the landlord at the end of such ninety (90) day period. Such conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator or his designee on the petition: Provided, however, that if a hearing has been held on the petition, the Rent Administrator or his designee shall, by order served upon the parties at least ten (10) days prior to the expiration of such ninety (90) days, make a provisional finding as to the rent ceiling adjustment justified by the petition; and if he does so, the landlord may implement only the amount of the rent ceiling adjustment authorized by the said order, if any. Except to the extent modified herein, the adjustment procedures of section 45-1695 shall apply to any adjustment.

(d) If on the effective date of this subchapter the rent being charged exceeds the allowable rent ceiling, that rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due: Provided, that this subsection shall not apply to any rent administratively approved under D.C. Law 1-33 as amended (former D.C. Code, secs. 45-1631 to 45-1674), or any rent increase authorized by a court of competent jurisdiction. The landlord shall notify the tenant in writing of any decrease required pursuant to this subchapter prior to the effective date of the decrease.

(e) A tenant may challenge a rent adjustment implemented pursuant to subsections (a) and (b) of this section by filing a petition with the Rent Administrator under section 45-1695. (Mar. 16, 1978, D.C. Law 2-54, § 206, 24 DCR 5334.)

Emergency Act Amendment.

1979 — For temporary amendment of subsection (b), see sec. 2 of the Emergency Heating Oil Cost Rent Adjustment Act of 1979 (D.C. Act 3-115, Nov. 2, 1979, 26 DCR 2067).

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 5-1281, 5-1301, 45-1681, 45-1683, 45-1686, 45-1688, 45-1689, 45-1690, 45-1693, 45-1695, 45-1699.13, 45-1699.15.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Purpose of prior law. — Subchapter III (the Rental Accommodations Act of 1975) was promulgated with the goal of stabilizing rents in the District by limiting landlords to an eight percent “rate of return” on a rental

unit. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm’n* (D.C. App. 1978, 391 A.2d 785).

§ 45-1688. Adjustments in the rent ceiling.

The rent ceiling for a particular rental unit computed according to the procedures specified in section 45-1687 may be increased or decreased, as the case may be:

- (a) according to section 45-1691 to allow for the cost of capital improvements;
 - (b) according to section 45-1692 to allow for any increase or decrease of related services and facilities;
 - (c) according to any final order of hardship adjustment permitted under section 45-1693(c);
- or
- (d) according to section 45-1694 as the result of a voluntary vacancy.
- (Mar. 16, 1978, D.C. Law 2-54, § 207, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1689. Qualifications for increases above the base rent.

(a) (1) Notwithstanding any provision of this subchapter, the rent for any rental unit shall not be increased above the base rent unless (A) the rental unit and the common elements are in substantial compliance with the Housing Regulations: Provided, that such noncompliance is not the result of tenant neglect or misconduct. Evidence of such substantial noncompliance shall be limited to housing code violation notice(s) issued by the District of Columbia Department of Housing and Community Development and such other offers of proof as the Commission may deem acceptable through its rule-making procedures; (B) the housing accommodation is registered in accordance with section 45-1686 (d); (C) the landlord of such housing accommodation is properly licensed pursuant to the Housing Regulations if such regulations require his or her licensing; (D) the manager of such accommodation, when other than the owner, is properly registered pursuant to the Housing Regulations if such regulations require his or her registration; (E) notice of such increase complies with subsection (g) of this section and section 45-1699.26.

(2) Where the Rent Administrator finds that there have been excessive and prolonged violations of the Housing Regulations affecting the health, safety and security of the tenants or the habitability of the housing accommodation in which such tenants reside and that the landlord has failed to correct such violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the February 1, 1973 base rent for such rental units until such time as the violations have been abated.

(b) A housing accommodation and each of the rental units therein shall be deemed to be in substantial compliance with the Housing Regulations:

(1) if, for purposes of the adjustments made in the rent ceiling in section 45-1687, all substantial violations cited at the time of the last inspection of the housing accommodation prior to the effective date of the increase by the Department of Housing and Community Development were abated within a forty-five (45) day period following the issuance of the citation(s), or that time granted by the Department of Housing and Community Development, and the Department of Housing and Community Development has certified the abatement, or the owner or the tenant has certified the abatement and has presented evidence to substantiate such certification; and

(2) if, for purposes of the filing of petitions for adjustments in the rent ceiling as prescribed in section 45-1695, the housing accommodation and each of the rental units therein have been inspected at the request of each landlord by the Department of Housing and Community Development within the thirty (30) days immediately preceding the filing of a petition for adjustment.

(c) If seventy percent (70%) of the tenants of a housing accommodation sign an agreement filed with the Rent Administrator to have the rent ceiling for each rental unit in the housing accommodation adjusted by a specified percentage, the Rent Administrator shall immediately certify the Rent Administrator's approval of the increase. The agreement shall include the signature of each tenant, the number of each tenant's rental unit or apartment, and a statement that the agreement with the landlord was entered into voluntarily without any form of coercion on the part of the landlord of the housing accommodation.

(d) A tenant of a housing accommodation who after receipt of no less than five (5) days' written notice that the landlord desires an inspection of the tenant's rental unit for the purpose of determining whether the housing accommodation is in substantial compliance with the Housing Regulations, refuses without good cause to admit or cause to be admitted an employee of the Department of Housing and Community Development for the purpose of inspecting the tenant's rental unit, or who refuses without good cause to admit or to cause to be admitted the landlord or the landlord's employee or contractor for the purpose of abating any violation of the Housing Regulations cited by the Department of Housing and Community Development, shall waive the right to challenge the validity of the proposed adjustment for reasons that the rental unit occupied by such tenant is not in substantial compliance with the Housing Regulations.

(e) Nothing in this section shall be construed to limit or abrogate a tenant's right to initiate any lawful action to correct any violation in the tenant's rental unit or in the housing accommodation in which the rental unit is located.

(f) Notwithstanding any other provision of this subchapter, no rent shall be adjusted under this subchapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for such rental unit for the term of such written lease or rental agreement.

(g) Any notice of an adjustment pursuant to section 45-1687 shall contain the registration number required by section 45-1686 (d), a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase.

(h) No adjustments in rent under this subchapter may be implemented unless and until a full one hundred and eighty (180) days have elapsed since any prior adjustment. (Mar. 16, 1978, D.C. Law 2-54, § 208, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1690, 45-1694.

§ 45-1690. Rent ceiling upon termination of exemption and for newly-covered rental units.

(a) The rent ceiling for any rental unit in a housing accommodation exempted by section 45-1686 from the provisions of sections 45-1686 (d) through 45-1697 (except section 45-1696) upon the expiration or termination of such exemption shall be the rent charged during the last six (6) consecutive months of the exemption, increased by no more than five percent (5%) of the rent charged during the last six (6) consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in sections 45-1689 (g) and 45-1699.26.

(b) A structure or building, including the land appurtenant thereto, which is located in the District of Columbia in which one (1) or more rental units as defined in section 45-1681 (w) is established after the effective date of this subchapter, shall be thereafter defined as a housing accommodation for the purposes of this subchapter. If any rental unit in such a housing accommodation is not otherwise exempted by one (1) of the provisions of section 45-1686, the rent ceiling for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the landlord and is deemed to be the equivalent of making the computations specified in section 45-1687 (a). (Mar. 16, 1978, D.C. Law 2-54, § 209, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1681.

§ 45-1691. Capital improvements.

(a) On a petition by the landlord, a rent adjustment to provide for the cost of capital improvements, amortized over the useful life of such improvements or according to Internal Revenue Service guidelines, and applied on an equal basis to those rental units within the housing accommodation which benefit from such an improvement, shall be approved by the Rent Administrator: Provided, that:

(1) (A) the improvement would protect, or enhance the health, safety or security of the tenant or the habitability of the housing accommodation; or

(B) the improvement will effect a saving in the use of energy by the housing accommodation or is intended to comply with applicable environmental protection regulations: Provided, that any savings on energy are passed on to the tenants; and

(2) (A) the amortized cost will not increase rents (aside from any increases otherwise provided for in this title) for a unit benefitting from the improvement in excess of ten percent (10%) of the rent charged before the completion of the improvement; or

(B) the Rent Administrator is satisfied based on the Rent Administrator's review and/or hearing of a petition filed under this section and such other information or survey of the affected tenants as the Rent Administrator may require that the interests of the affected tenants are being protected. A finding that the affected tenants desire the capital improvement and have agreed to the rent adjustment required to finance the capital improvement may be evidence that the interests of the tenants are being protected.

(b) Plans, contracts, specifications and permits relating to such capital improvements shall be retained for one (1) year by the landlord or his or her designated agent for such inspection by affected tenants as such tenants may request at the landlord's place of business in the District of Columbia during working hours. If the landlord does not have a place of business in the District of Columbia, the plans, contracts, specifications and permits relating to the capital improvements shall be made available upon request by the affected tenants at the Rental Accommodations Office.

(c) Action by the Rental Administrator on a rent adjustment pursuant to this section shall be taken within sixty (60) days of receipt of plans for the capital improvement approved by the appropriate District of Columbia agency or agencies. (Mar. 16, 1978, D.C. Law 2-54, § 210, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in sections. 45-1688, 45-1695.

§ 45-1692. Services and facilities.

If the Rent Administrator determines that the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, so as to proportionally reflect the value of the change in services or facilities. (Mar. 16, 1978, D.C. Law 2-54, § 211, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.
Section referred to in sections. 45-1688, 45-1695.

§ 45-1693. Hardship petition.

(a) Where an election has been made pursuant to section 45-1687 (c) to seek a rent adjustment through a hardship petition, the Rent Administrator shall, after review of the figures and computations set forth in the landlord's petition, allow such additional increases in rent as would generate no more than an eight percent (8%) rate of return computed according to subsection (b) of this section.

(b) In determining the rate of return for each housing accommodation, the following formula, computed over a base period of the consecutive twelve (12) months immediately preceding the filing of a petition under this subchapter, shall be used to:

(1) obtain the net income by subtracting from the sum of maximum possible rental income which can be derived from a housing accommodation and the maximum amount of all other income which can be derived from the housing accommodation the following:

(A) the operating expenses: Provided, that the following items shall not be allowed as operating expenses: (i) membership fees in organizations established to influence legislation and regulations; (ii) contributions to lobbying efforts; (iii) contributions for legal fees in the prosecution of class action cases; (iv) political contributions to candidates for office; (v) mortgage principal and interest payments; (vi) maintenance expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments or any other method; (vii) attorney's fees charged for services connected with counseling or litigation related to actions brought by the government of the District of Columbia due to the landlord's repeated failure to comply with applicable Housing Regulations as evidenced by housing code violation notices issued by the Department of Housing and Community Development; and (viii) any expenses for which the tenant has lawfully paid directly;

(B) the management fee, where applicable, of no more than six percent (6%) of the maximum rental income of the housing accommodation unless an additional amount is approved by the Rent Administrator pursuant to subsection (b) (1) (B) (i) of this section;

(i) if in the computation of a rate of return, a landlord seeks to deduct a management fee in excess of six percent (6%) of the maximum possible rental income, the landlord shall first

file with the Rent Administrator a petition to allow the excess to be deducted. The petition shall contain such information as the Rent Administrator may require, including, but not limited to, the name of the payee. Only so much of the excess over six percent (6%) of the maximum possible rental income as is approved by the Rent Administrator shall be deducted.

(ii) if the Rent Administrator determines based on the petition and such other information as the Rent Administrator may require that the excess or part thereof is reasonable, the Rent Administrator may permit the same excess or so much of the excess as is reasonable;

(C) property taxes;

(D) depreciation expenses (computed on a straight line basis) of no more than two percent (2%) of the assessed value of the building as determined by the Mayor; no depreciation may be deducted for the value of land;

(E) vacancy losses for the housing accommodation; and

(F) uncollected rents.

(2) divide the net income by the market value of the housing accommodation to determine the rate of return.

(c) If after any increase which may be authorized pursuant to this subchapter, the landlord can show a negative cash flow for a particular housing accommodation after consideration of debt service, the Rent Administrator, upon a petition filed by the landlord, may allow such additional increases in rent as will provide a one-quarter of one percent ($\frac{1}{4}\%$) cash flow based on the maximum possible rental income for the housing accommodation: provided, that in the consideration of such petition(s), the Rent Administrator shall consider the degree of hardship which the requested increase will place upon the tenants of the housing accommodation. (Mar. 16, 1978, D.C. Law 2-54, § 212, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1686, 45-1688, 45-1695.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Rent Administrator without discretion to reduce depreciation deduction. — Former § 45-1644 (a) (3) (B) (4) (iv) did not give the Rent Administrator discretion to reduce a landlord's depreciation deduction; it was only when a landlord sought a greater than two percent deduction that the Administrator had discretion to examine the request under former § 45-1645 (c). *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

Regardless of time building owned or its tax status. — Construction of former depreciation provision (§ 45-1644 (a) (3) (B) (4) (iv)) by the Rental Accommodations Commission, which disallowed any discretion on the part of the Rent Administrator to deny or lessen a landlord's claimed two percent depreciation charge regardless of how

long the building had been owned or of its status for tax purposes, was not unreasonable and did not contravene that section. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

Former depreciation expense deduction not an arbitrary ceiling. — The subtraction from gross income as a depreciation deduction "of no more than two percent of the assessed market value of the housing accommodation" authorized in former § 45-1644 (a) (3) (B) (4) (iv) was not meant to be an arbitrary ceiling determined according to tax principles. *Tenants of 3039 Q St., N.W. v. District of Columbia Rental Accommodations Comm'n* (D.C. 1978, 391 A.2d 785).

§ 45-1694. Vacant accommodation.

(a) Notwithstanding subsection (h) of section 45-1689, when a tenant vacates a rental unit on his or her own initiative or as a result of a notice to vacate for any of the following causes: (1) nonpayment of rent; (2) violation of an obligation of his or her tenancy; or (3) use of the accommodation for an illegal purpose or purposes as determined by a court of competent jurisdiction, then, the rent ceiling may, at the election of the landlord, be adjusted to either (A) the rent ceiling which would otherwise be applicable to such rental unit under this subchapter plus three percent (3%) thereof, or (B) the rent ceiling of a substantially identical rental unit in the same housing accommodation: Provided, that no increase under this section shall be permitted unless the housing accommodation has been registered under section 45-1686 (b).

(b) For the purposes of this section, rental units shall be defined to be “substantially identical” where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height (if exposure and height have previously been factors in the amount of rent charged), and are in comparable physical condition. (Mar. 16, 1978, D.C. Law 2-54, § 213, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1688.

§ 45-1695. Adjustment procedure.

(a) The Rent Administrator or his or her designee shall consider adjustments allowed by sections 45-1691, 45-1692 and 45-1693, or a challenge to a section 45-1687 adjustment, upon a petition filed with him or her by the landlord or tenant of such rental unit. Such petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator containing such information as the Rent Administrator or the Commission may require. The Rent Administrator or his or her designee shall issue a decision and an order approving or denying, in whole or in part, each petition within one hundred and twenty (120) days after such petition is filed with the Rent Administrator. Such time may be extended only by written agreement between the landlord and tenant of such rental unit.

(b) Upon receipt of such petition, the Rent Administrator or his or her designee shall notify the nonpetitioning party (landlord or tenant) by certified mail or any other form of service which assures delivery of such petition and of the right of either party to make, within fifteen (15) days after the receipt of such notice, a written request for a hearing on the petition. If a hearing is timely requested by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or any other form of service which assures delivery at least fifteen (15) days before the commencement of such hearing. Such notice shall inform each of the parties of his or her right to retain legal counsel to represent him or her at the hearing.

(c) Each landlord of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator or the Rent Administrator's designee, within fifteen (15) days after demand therefor is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator or the Commission may require.

(d) The Rent Administrator or his or her designee may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(e) The Rent Administrator or his or her designee may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under this section or under section 212 of D.C. Law 1-33 (former D.C. Code, sec. 45-1652) for adjustment as to the same rental units within the six (6) months immediately preceding the filing of the pending petition.

(f) All petitions filed under this section, all hearings held relating thereto, and all appeals taken from decisions of the Rent Administrator or his or her designee, shall be considered and held according to the provisions of this section and to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall apply.

(g) Decisions of the Rent Administrator or his or her designee shall be made on the record relating to any petition filed with him or her. An appeal from any decision of the Rent Administrator or his or her designee may be taken by the aggrieved party to the Commission within ten (10) days after the decision of the Rent Administrator or his or her designee; or the Commission may review a decision of the Rent Administrator or the Rent Administrator's designee on its own initiative. The Commission may reverse, in whole or in part, any decision of the Rent Administrator or the Rent Administrator's designee which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this subchapter, or

unsupported by substantial evidence in the record of the proceedings before the Rent Administrator or his or her designee; or it may affirm, in whole or in part, the Rent Administrator's or his or her designee's decision. The Commission shall issue a decision with respect to an appeal within thirty (30) days after such an appeal was filed.

(h) No increase in rent allowed under this subchapter shall be implemented unless the tenant concerned has been given written notice pursuant to section 45-1699.26.

(i) A copy of any decision made by the Rent Administrator or his or her designee, or by the Commission under this section shall be mailed by certified mail or any other form of service which assures delivery to the parties to such decision.

(j) The Rent Administrator and, where applicable, the Commission, shall accord priority to a landlord hardship petition covering a housing accommodation for which the federal government is entitled to approve rent increases, where processing of such a petition has not begun within the thirty (30) days immediately following the filing of the petition. Processing of such petition(s) shall begin no later than five (5) days after receipt by the Rent Administrator of written requests from the landlord and from the federal agency. (Mar. 16, 1978, D.C. Law 2-54, § 214, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1687, 45-1689, 45-1699.13.

§ 45-1696. Security deposit.

No person shall demand or receive a security deposit for any rental unit where no security deposit was demanded or received for such rental unit upon the effective date of this subchapter. (Mar. 16, 1978, D.C. Law 2-54, § 215, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1686, 45-1690.

§ 45-1697. Judicial review.

Any person or class of persons aggrieved by a decision of the Commission, or by any failure on the part of the Commission or Rent Administrator to act within any time certain mandated by this subchapter, may seek judicial review of such decision or an order compelling such decision by filing a petition for review in the District of Columbia Court of Appeals. The Commission or the Rent Administrator may commence a civil action to enforce any rule or decision issued by them. (Mar. 16, 1978, D.C. Law 2-54, § 216, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1690.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

Courts have limited role in reviewing rent control legislation and the wisdom or expediency of the legislative method is not subject to review. *Cobb v. Bynum* (D.C. App. 1978, 387 A.2d 1095).

Trial court erroneously declared prior rent control legislation unconstitutional as applied to landlord where

judge made no general finding of constitutional infirmity but merely projected what would happen if rent control were to be imposed upon the landlord and announced displeasure with that result. *Cobb v. Bynum* (D.C. 1978, 387 A.2d 1095).

Title III.—Rental Supplement Program

§ 45-1698. Eligibility.

(a) The rental supplement provided by this title shall be available to any tenant of a rental unit in the District of Columbia:

(1) who is a bona fide resident of a rental unit in the District of Columbia pursuant to regulations promulgated by the Mayor, or the Mayor’s designee;

(2) whose current annual income (combined with the income of all other persons residing in such rental unit) does not exceed the eligibility income limits established by the District of Columbia for persons eligible to receive housing assistance payments pursuant to section 5-1296(b);

(3) whose rent (determined without regard for the rental assistance provided herein) and utilities (utilities for the purpose of this section shall include heating fuel, water and sewer, general purpose electricity and cooking fuel) (to the extent paid by such tenant) exceed thirty-five percent (35%) of the combined gross income of all persons residing in such rental unit; and

(4) whose total assets (combined with the assets of all other persons residing in such rental unit), excluding cash surrender value in any life insurance policy in an amount of twenty-five thousand dollars (\$25,000.00) or less, personal clothing, automobile, furniture, and furnishings, do not exceed ten thousand dollars (\$10,000.00) in value.

(b) Notwithstanding any other provision in this section, no tenant shall be eligible to receive rental supplements hereunder if any person residing in the rental unit:

(1) is receiving monetary assistance either directly or indirectly under the Aid to Families with Dependent Children Program (42 U.S.C.A. sec. 600 et seq.) as amended, Aid to the Blind and Aid to the Totally and Permanently Disabled (42 U.S.C.A. sec. 1318 et seq.) as amended, or such other public assistance programs as may be specified by the Mayor: Provided, however, that a tenant receiving benefits under the Social Security Program, Old Age Survivors and Disability Income (42 U.S.C. sec. 402-31), as amended, shall not by reason of the receipt of such benefits be deemed ineligible under this paragraph; or

(2) is receiving monetary assistance under provisions of the Condominium Act of 1976 (D.C. Code, sec. 5-1201 et seq.); or

(3) is residing in a publicly or privately owned rental unit administered, operated, maintained, or subsidized, in whole or in part, by an instrumentality or agency of the government of the District of Columbia or federal government: Provided, however, that a tenant who resides in a single-family rental accommodation financed under the federally insured programs of the Federal Housing Administration (Chapter 37, Title 38 U.S.C.), as amended, shall not by reason of such residence be deemed ineligible under this title.

(c) Tenants receiving rental supplements under this title shall also be eligible to receive a tax credit under the provisions of section 47-1567g: Provided, however, that said tenants are otherwise eligible under the provisions of said section 47-1567g to receive such tax credit.

(d) Notwithstanding any other provision of this subchapter, no tenant shall be initially eligible to receive rental supplements hereunder if the rent being paid exceeds the following amounts:

| Number of Non-Elderly or Non-Handicapped Persons Residing in Unit | Rent Being Paid Per Month |
|---|------------------------------|
| 1 | \$170 |
| 2 | 205 |
| 3 | 307 |
| 4 | 340 |
| 5 | 374 |
| 6 | 409 |

For Senior Citizens or
Handicapped, Number of
Persons Residing in Unit

Rent Being Paid
Per Month

1

\$307

2

307

3

307

4-6

same as non-elderly table above.

No person shall be deemed ineligible to continue to receive rental supplements under this title because a rent adjustment authorized pursuant to this subchapter after the time the initial rent supplement was granted causes the rent paid per month to exceed the maximum allowable amount as set in this subsection. However, in computing the amount of the rent supplement, that part of the rent which exceeds the maximum amount allowable under this subsection shall not be considered in the computation of the rental supplement. These limits shall be revised annually by the Mayor to reflect the average annual increase in rental housing costs in the District of Columbia.

(e) For the purpose of this title the term "gross income" shall mean all items considered income for District of Columbia or federal tax purposes, and all other monies or payments received by any individual residing in the rental unit, including, but not limited to, social security benefits, unemployment benefits, workman's compensation, state benefits, alimony and child support, pensions, retirement benefits, annuities, monetary gifts in excess of three hundred dollars (\$300.00) and such other sums as the Mayor or the Mayor's designee shall from time to time determine. (Mar. 16, 1978, D.C. Law 2-54, § 301, 24 DCR 5334; Mar. 3, 1979, D.C. Law 2-130, § 5, 25 DCR 2517; Nov. 20, 1979, D.C. Law 3-37, § 4, 26 DCR 1564.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section, in subsection (c), by substituting "Tenants" for "No tenant," "also be eligible to receive" for "claim" and the proviso for "for rent paid during the period for which such tenant received assistance hereunder." Act Nov. 20, 1979, D.C. Law 3-37, amended section by inserting "of Article I of Title VI" in subsection (c).

Emergency Act Amendments.

1978 — For temporary amendment of subsection (c), see sec. 5 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 5 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514); and for temporary insertion of "of title VI," see sec. 2 of the Tax Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084).

1979 — For temporary amendment of subsection (c), see sec. 5 of the Third District of Columbia Renters and

Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166); sec. 4 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 4 of the Real Property Tax Classifications Second Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-130. See note to § 47-622.1.

Legislative History of Law 3-37. See note to § 47-632.

Compiler's note. The amendment made by D.C. Law 3-37 was not given effect since the amendment was repetitive and did not add to the clarity of subsection (c).

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

Section referred to in section. 45-1699.3.

Cross reference. For authorization of Mayor to promulgate rules and regulations, see § 47-632.2.

§ 45-1699. Rental supplement grants.

(a) The Mayor is hereby authorized to make rental supplement grants available on a yearly basis to eligible renters in accordance with the provisions of this title. The amount of such yearly rental supplement grant shall be determined by subtracting thirty-five percent (35%) of the combined gross income of all persons residing in such rental unit from the yearly rent due on that unit: Provided, however, that in no case shall such grant exceed fifteen percent (15%) of the gross annual rent.

(b) On or before the twentieth (20th) day of each month preceding the month in which rent on the rental unit is due, the Mayor shall forward one-twelfth ($1/12$) of such rental supplement grant (rental supplement payment) directly to the eligible renter at the address of the unit indicated on the renter's application form.

(c) Each rental supplement payment shall be in the form of a check drawn against the depositories of the District of Columbia and shall be payable jointly to the applicant and (as

indicated on the application form) the landlord or designee entitled to receive rental payments for the applicant's unit.

(d) Each rental supplement payment check shall be drawn in such a manner as to become void forty-five (45) days after its issuance. (Mar. 16, 1978, D.C. Law 2-54, § 302, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1699.2.

§ 45-1699.1. Administration.

(a) The Mayor shall administer the Rental Supplement Program established by this title.

(b) The Mayor shall have the authority and power to promulgate, amend, rescind and enforce such rules, regulations and procedures for the administration of this title as are consistent with the provisions of this title.

(c) Application for a rental supplement grant shall be submitted to the Mayor and shall be on a form as designated by the Mayor. Such form shall conform insofar as possible to forms used by the federal government for its rental assistance programs. The applicant shall execute such form under oath or affirmation as to the truth of the matters contained therein. Additional verification procedures may be required as are necessary to ensure that the information contained in such forms is accurate, including, but not limited to, certified copies of tax returns of all those residing in the unit, statements of net worth of all those residing in the unit, copies of leases, rent receipts or cancelled checks, and verification of benefits from the Social Security Administration.

(d) The Mayor shall review the application and determine, in a timely fashion, the eligibility of the applicant. The applicant shall be notified in writing of approval or disapproval of the application stating the reasons for any findings of ineligibility.

(e) Action on all applications filed under this title, any hearings held relating thereto, and all appeals taken from decisions of the Mayor shall be considered and held according to the rules and regulations established under this title and the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct and irreconcilable conflict between such rules and the District of Columbia Administrative Procedure Act the provisions of the District of Columbia Administrative Procedure Act shall govern.

(f) To the extent practical, all information provided by an applicant shall be confidential and shall not be disclosed in such a form as to identify the rent subsidy grant applicant. (Mar. 16, 1978, D.C. Law 2-54, § 303, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1699.2.

§ 45-1699.2. Continued eligibility.

(a) Sixty (60) days prior to the expiration of any rental supplement authorized under section 45-1699, the department shall notify, in writing, the tenant receiving rental supplement that the rental supplement grant is about to expire and that the tenant, if eligible and desiring to continue to receive rental supplement, must reapply within thirty (30) days upon receipt of such notice. The tenant shall reapply by executing under oath or affirmation a statement of continued eligibility on a form approved by the Mayor and submitting same to the Mayor. Except as otherwise provided in this section, the provisions of section 45-1699.1 shall apply to the processing of statements of continued eligibility under this section. Unless the Mayor determines that such person is not eligible for a rental supplement grant, such assistance shall continue for the succeeding twelve (12) months provided the tenant continues to be eligible therefor. (Mar. 16, 1978, D.C. Law 2-54, § 304, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.3. Termination of eligibility.

(a) If at any time a tenant receiving rental supplements hereunder fails to satisfy the requirements of section 45-1698 relating to conditions of eligibility, he shall immediately notify, in writing, the Mayor of his ineligibility. Rental supplement shall terminate on the next day thereafter upon which rent is due.

(b) If, at any time, the Mayor determines that a tenant receiving rental supplements is not, or has ceased to be, eligible therefor, he shall so notify the tenant and landlord in writing, setting forth the reasons for such determination. Rental supplement payments shall terminate on the next day the rent is due occurring at least thirty (30) days after the date such notice is given, unless, within fifteen (15) days after the receipt of such notice, the tenant submits to the Mayor a written statement, under oath or affirmation, and including any available supporting documents, asserting his reasons for alleging continued eligibility. Within thirty (30) days following the receipt of such statement and documents, the Mayor shall make the final determination of such tenant's eligibility for continued receipt of rental supplements. (Mar. 16, 1978, D.C. Law 2-54, § 305, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.4. Tax exemption.

(a) All monies received by any tenant through rental supplement grants under this subchapter are hereby exempt from income taxes payable pursuant to section 47-1551 et seq. (Mar. 16, 1978, D.C. Law 2-54, § 306, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title IV.—Revenue

§ 45-1699.5. Annual rental unit fee.

Each landlord required to register under this subchapter shall pay a fee of two dollars (\$2.00) for each rental unit in a housing accommodation registered by the landlord. The fee shall be paid annually to the government of the District of Columbia at the time the landlord applies for his or her business license or a renewal thereof; or in the case of a housing accommodation for which no such license is required, at such time and in such manner as the Commission may determine. Such fees shall be deposited in a timely manner in such depository or depositories designated by the government of the District of Columbia for such purposes. (Mar. 16, 1978, D.C. Law 2-54, § 401, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title V.—Evictions and Retaliatory Action

§ 45-1699.6. Evictions.

(a) No tenant shall be evicted from a rental unit for any reason other than non-payment of rent unless he or she has been served with a written notice to vacate which meets the requirements of this subchapter. Notice of all evictions other than for non-payment of rent shall be served upon both the tenant and the Rent Administrator.

(b) No tenant shall be evicted from a rental unit, notwithstanding the expiration of his or her lease or rental agreement, so long as he or she continues to pay the rent to which the landlord is entitled for such rental unit unless:

(1) the tenant is violating an obligation of his or her tenancy and fails to correct such violation within thirty (30) days after receiving notice thereof from the landlord;

(2) a court of competent jurisdiction has determined that the tenant has performed an illegal act within such rental unit or housing accommodation;

(3) the landlord seeks in good faith to recover possession of such rental unit for his or her immediate and personal use and occupancy as a dwelling;

(4) the landlord has in good faith contracted in writing to sell the rental unit or the housing accommodation in which such rental unit is located, for the immediate and personal use of and occupancy by another person, so long as at the time the owner offers the rental unit or housing accommodation for sale, the landlord has so notified the tenant in writing and extended to the tenant an opportunity to purchase as provided in title VIII of this subchapter:

Provided, that such rental unit is not being converted to a condominium or a cooperative;

(5) The landlord seeks in good faith to recover possession of the rental unit:

(A) for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied so long as the plans for such alterations have been filed with the Rent Administrator and approved by the Rent Administrator, and such plans demonstrate that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied; or

(B) for the immediate purpose of demolishing the housing accommodation in which such rental unit is located and replacing it with new construction: Provided, that a copy of the building permit for such new construction has been filed with the Rent Administrator, and: Provided, further, that the requirements of title VIII of this subchapter have been complied with; or

(C) for the immediate purpose of substantially rehabilitating the housing accommodation: Provided, that the requirements of title VIII have been complied with; or

(D) for the immediate purpose of discontinuing the housing use and occupancy of such rental unit: Provided, that (i) the landlord shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous twelve (12) month period beginning from the date that such use is discontinued pursuant to this section; (ii) the landlord shall not resume any housing use of the unit for a continuous twelve (12) month period beginning from the date that such use is discontinued pursuant to this section; (iii) the landlord shall not reread the unit at any greater rent than would have been permitted pursuant to this subchapter had the housing use not been discontinued; and (iv) the landlord shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation (such as address and number of units), the reason for the discontinuance of use and future plans for the property.

(c) (1) In any case where a landlord seeks to recover possession of a rental unit under subsections (b) (3), (b) (4), (b) (5) (A), or (b) (5) (B) of this section, he or she shall first notify the tenant in writing at least ninety (90) days prior thereto, of his or her intent to recover possession of such rental unit.

(2) In any case where the landlord seeks to recover possession of a rental unit pursuant to subsection (b) (5) (C) of this section, for purposes of substantial rehabilitation, or pursuant to subsection (b) (5) (D) of this section, for purposes of housing discontinuance, such notice shall be in accordance with section 45-1699.16.

(3) In any case where a landlord seeks to recover possession of a rental unit or housing accommodation to convert such rental unit or housing accommodation to a condominium, or cooperative, or to another use, notice shall be given according to the provisions of section 408 (b) of the Condominium Act of 1976, (former D.C. Code sec. 5-1268) or sections 45-1699.10 and 45-1699.11, respectively.

(4) In any case where the landlord seeks to recover possession of a rental unit under subsection (b) (5) (D) of this section, he or she shall first notify the tenant, in writing, at least one hundred eighty (180) days prior thereto, of his or her intent to recover possession of such rental unit.

(5) Thirty (30) days notice shall be provided in all other cases.

(6) The notice required shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this subchapter, a statement that the housing accommodation is registered with the Commission and the registration number of the accommodation.

(d) No landlord shall demand or receive rent for any rental unit which he or she has repossessed under subsections (b) (3) or (b) (5) (D) of this section during the twelve (12) month period beginning on the date he or she recovered possession of such rental unit. No person who has purchased a rental unit which has been repossessed by a landlord under subsection (b) (4) of this section shall demand or receive rent for such rental unit during the twelve (12) month period beginning on the date on which such landlord recovered such rental unit.

(e) In the case of any rental unit which has been repossessed by a landlord under subsection (b) (5) (A) of this section, the tenant from whom the landlord repossessed such unit shall have an absolute right to re-rent such unit immediately upon completion of the renovation or alteration. Where the renovations or alterations are necessary to bring the unit into substantial compliance with the Housing Regulations, the tenant may re-rent at the same rent and under the same obligations as were in effect at the time he or she was dispossessed: Provided, that such renovations or alterations were not made necessary by the negligent or malicious conduct of such tenant.

(f) Tenants displaced by actions under subsection (b) (5) of this section shall be entitled to receive relocation assistance as set forth in title VIII of this subchapter: Provided, that the tenants meet the eligibility criteria of that title. (Mar. 16, 1978, D.C. Law 2-54, § 501, 24 DCR 5334; July 13, 1978, D.C. Law 2-91, § 504, 24 DCR 9765; Sept. 29, 1978, D.C. Law 2-113, § 2, 25 DCR 1477; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendments.

1978 — Act July 13, 1978, D.C. Law 2-91, amended section by inserting “any housing” and by deleting “as a rental accommodation” in former paragraph (5)(D)(2) of subsection (b). Act Sept. 29, 1978, D.C. Law 2-113, amended section by deleting “section 208(b) of the ‘Condominium Act of 1976’ ” and inserting in lieu thereof “section 408(b) of the ‘Condominium Act of 1976’.” Act Oct. 13, 1978, D.C. Law 2-121, amended paragraph (5)(D) of subsection (b) generally and amended paragraph (1) of subsection (c) by deleting “(b)(5)(B) or (b)(5)(D),” and inserting in lieu thereof “or (b)(5)(B)” and by redesignating paragraphs (4) and (5) as (5) and (6) and inserting new paragraph (4), and by adding after the word “rehabilitation,” the phrase “or pursuant to subsection (b)(5)(D) of this section, for purposes of housing discontinuance,” in paragraph (2) of subsection (c).

Emergency Act Amendments.

1978 — For temporary amendment providing for extension of time for notice to vacate, see secs. 2 and 3 of the Extension of Notice to Vacate Emergency Act of 1978 (D.C. Act 2-174, Apr. 10, 1978, 24 DCR 9288); sec. 2 of the First Extension to Notice of Vacate Emergency Amendment Act of 1978 (D.C. Act 2-198, May 22, 1978, 25

DCR 752); sec. 2 of the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-91. See note to § 47-3301.

Legislative History of Law 2-113. Law 2-113 was introduced in Council and assigned Bill No. 2-335, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-237 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-121. Law 2-121 was introduced in Council and assigned Bill No. 2-333, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-251 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 45-1699.19, 45-1699.20.

§ 45-1699.7. Retaliatory action.

(a) No landlord shall take any retaliatory action against any tenant who exercises any right conferred upon him or her by this subchapter, by any rule or order issued pursuant thereto, or by any other provisions of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit; action which would increase rent, decrease services, increase the obligation of a tenant or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service; and any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause; and any other form of threat or coercion.

(b) In determining whether an action taken by a landlord against a tenant is retaliatory action, the trier of fact shall take into consideration whether, within the six (6) months preceding such landlord's action, the tenant:

(1) has made a witnessed oral or written request to the landlord to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the Housing Regulations;

(2) contacted appropriate officials of the government of the District of Columbia, either orally in the presence of a witness or in writing, concerning existing violations of the Housing Regulations in the rental unit he or she occupies or pertaining to the housing accommodation in which such rental unit is located, or reported to such officials suspected violations which, if confirmed, would render such rental unit or housing accommodation in noncompliance with the Housing Regulations;

(3) legally withheld all or part of his or her rent, after having given a reasonable notice to the landlord, either orally in the presence of a witness or in writing, of a violation of the Housing Regulations;

(4) organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) made an effort to secure or enforce any of his or her rights under his or her lease or contract with the landlord; or

(6) brought legal action against the landlord.

(Mar. 16, 1978, D.C. Law 2-54, § 502, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title VI.—Sale of Rental Housing

§ 45-1699.8. Sale of single-family housing accommodations.

(a) Any owner of a housing accommodation comprised of a single rental unit may sell such housing accommodation to a purchaser but only after such owner has given the tenant of such housing accommodation an opportunity to purchase such housing accommodation at a price which represents a bona fide offer of sale. A written offer shall be given to the tenant by the landlord. The offer to purchase the housing accommodation shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenant's right to purchase the housing accommodation under the provisions of this section. The tenant shall be afforded at least forty-five (45) days in which to make a contract with the landlord for the purchase of the accommodation at a mutually agreeable price and under mutually agreeable terms.

(b) The tenant shall also have the right of first refusal during the fifteen (15) days after the landlord has received a valid sales contract or other written offer to purchase from a prospective purchaser. This fifteen (15) day period begins after expiration of the forty-five (45) day period, provided by subsection (a), regardless of when the landlord may receive the offer. Notice to the tenant must include a copy of the contract or written offer.

(c) If the housing accommodation is not sold during the six (6) months immediately following the original offer to the tenant under subsection (a) of this section and is still being offered for sale, the landlord shall make another offer to the tenant in the same manner as the first offer was made.

(d) A landlord shall not require the tenant to pay an earnest-money deposit of more than five percent (5%) of the sales price. Earnest-money deposits pursuant to this subsection shall be refundable in the event of any good-faith failure of the prospective buyer to perform under the contract. A landlord may require no less than sixty (60) days for settlement after the effective date of the purchase contract. (Mar. 16, 1978, D.C. Law 2-54, § 601, 24 DCR 5334; Oct. 18, 1979, D.C. Law 3-26, § 2 (a), 26 DCR 664.)

Effect of Amendment.

1979 — Act Oct. 18, 1979, D.C. Law 3-26, amended section by adding the last two sentences in subsection (b), and by adding subsection (d).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Emergency Offer to Purchase Act of 1978 (D.C. Act 2-273, Sept. 1, 1978, 25 DCR 2545).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency Offer to Purchase Act of 1979 (D.C. Act 3-16, Mar. 16, 1979, 25 DCR 8793); sec. 2 of the Second Emergency Offer to Purchase Act of 1979 (D.C. Act 3-54, June 12, 1979, 25 DCR 10886); and sec. 2 of The Latest Conforming Emergency Offer to Purchase Act of 1979 (D.C. Act 3-96, Aug. 27, 1979, 26 DCR 1022).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 3-26. Law 3-26 was introduced in Council and assigned Bill No. 3-48, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on August 1, 1979, it was assigned Act No. 3-75 and transmitted to both Houses of Congress for its review.

§ 45-1699.9. Sale of housing accommodations comprised of two or more rental units.

A landlord of a housing accommodation comprised of two (2) or more rental units may sell it to a purchaser but only after the landlord has done the following:

(a) in the case of a housing accommodation comprised of four (4) rental units or less, given the current tenants jointly or severally an opportunity to purchase the housing accommodation at a price which represents a bona fide offer of sale. A written notice of intent to sell shall be given to the tenants by the landlord. The notice shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenants' right to purchase the housing accommodation under the provisions of this section. The tenants shall be afforded at least ninety (90) days in which to contract with the landlord for the purchase of the housing accommodation at a mutually agreeable price and under mutually agreeable terms. At the expiration of the ninety (90) day period, the landlord shall provide an additional fifteen (15) day period during which any one of the current tenants may contract with the landlord for the purchase of the accommodation at a mutually agreeable price and under mutually agreeable terms. A landlord shall not require a tenant or tenants to pay an earnest-money deposit of more than five percent (5%) of the sales price. Earnest-money deposits pursuant to this subsection shall be refundable in the event of any good-faith failure of the organization to perform under the contract. A landlord may require no less than sixty (60) days for settlement after the effective date of the purchase contract; or

(b) in the case of a housing accommodation comprised of more than four (4) rental units, given the organization of tenants with the legal capacity to hold real estate an opportunity to purchase the housing accommodation at a price which represents a bona fide offer of sale. The landlord shall give to the tenants a written notice of intent to sell. The notice shall include, but not be limited to, the asking price for the housing accommodation and a statement of the tenants' right to purchase the housing accommodation under this subsection, provided the tenants have formed an organization with the legal capacity to hold real estate. If at the time of receipt of the notice no eligible organization of tenants exists, the tenants shall be afforded at least thirty (30) days therefrom in which to form an organization of tenants with the legal capacity to hold real estate. An eligible organization of tenants shall be given a bona fide written offer to sell and at least ninety (90) days in which to contract with the landlord for the purchase of the housing accommodation at a mutually agreeable price and under mutually agreeable terms. The ninety (90) day contracting period shall begin upon receipt by the eligible organization of tenants of the landlord's bona fide offer to sell. If no eligible organization of tenants exists, the contracting period shall begin, if at all, after expiration of the thirty (30) day period afforded tenants to organize and immediately upon the newly formed tenant organization's receipt of the landlord's bona fide offer to sell. A landlord shall not require the organization to pay an earnest-money deposit of more than five percent (5%) of the sales price. Earnest-money deposits pursuant to this subsection shall be refundable in the event of any good-faith failure of the organization to perform under the contract. A landlord may require no less than sixty (60) days for settlement after the effective date of the purchase contract.

(Mar. 16, 1978, D.C. Law 2-54, § 602, 24 DCR 5334; Sept. 28, 1979, D.C. Law 3-18, § 2, 26 DCR 358; Oct. 18, 1979, D.C. Law 3-26, § 2 (b), (c), 26 DCR 664.)

Effect of Amendments.

1979 — Act Sept. 28, 1979, D.C. Law 3-18, amended section, in subsection (b), by deleting "and which has an organization of tenants with the legal capacity to hold real

estate, who have previously indicated an interest in purchasing the housing accommodation" following "units" and inserting "organization of" and "with the legal capacity to hold real estate" in the first sentence, by

rewriting the second sentence, by substituting "this subsection" for "the provisions of this section" and adding the proviso in the third sentence, by inserting the fourth sentence, by substituting "An eligible organization of tenants shall be given a bona fide written offer to sell and at least ninety (90)" for "The tenants shall be afforded at least forty-five (45)" in the fifth sentence and by adding the sixth and seventh sentences. Act Oct. 18, 1979, D.C. Law 3-26, amended section by substituting "ninety (90)" for "forty-five (45)" in the fourth and fifth sentences, by deleting "or" at the end of the fifth sentence and by adding the last three sentences in subsection (a), and by substituting "ninety (90)" for "forty-five (45)" in the fifth sentence and by adding the last three sentences in subsection (b).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Emergency Multi-Family Rental Housing Purchase Act of 1978 (D.C. Act 2-277, Oct. 3, 1978, 25 DCR 3419); sec. 2 of the Emergency Offer to Purchase Act of 1978 (D.C. Act 2-273, Sept. 1, 1978, 25 DCR 2545); and sec. 2 of the Emergency Multi-Family Rental Housing Purchase Act of 1979 (D.C. Act 2-314, Dec. 14, 1978, 25 DCR 6118).

1979 — For temporary amendment of section, see sec. 2 of the Second Emergency Multi-Family Rental Housing

Purchase Act of 1979 (D.C. Act 3-15, Mar. 13, 1979, 25 DCR 8787); sec. 2 of the First Emergency Offer to Purchase Act of 1979 (D.C. Act 3-16, Mar. 16, 1979, 25 DCR 8793); sec. 2 of the Third Emergency Multi-Family Rental Housing Purchase Act of 1979 (D.C. Act 3-53, June 11, 1979, 25 DCR 10880); sec. 2 of the Second Emergency Offer to Purchase Act of 1979 (D.C. Act 3-54, June 12, 1979, 25 DCR 10886); sec. 2 of the Fourth Emergency Multi-Family Rental Housing Purchase Act of 1979 (D.C. Act 3-90, Aug. 27, 1979, 26 DCR 986); and sec. 2 of The Latest Conforming Emergency Offer to Purchase Act of 1979 (D.C. Act 3-96, Aug. 27, 1979, 26 DCR 1022).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 3-18. Law 3-18 was introduced in Council and assigned Bill No. 3-17, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 22, 1979 and June 5, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-62 and transmitted to both Houses of Congress for its review.

Legislative History of Law 3-26. See note to § 45-1699.8.

NOTES TO DECISIONS

Legal capacity required. — This section requires an organization to have legal capacity to hold real estate. *Rock Creek Gardens Tenants Ass'n v. Ferguson* (D.C. 1979, 404 A.2d 972).

Voluntary unincorporated association does not have legal capacity to hold title to real estate. *Rock Creek Gardens Tenants Ass'n v. Ferguson* (D.C. 1979, 404 A.2d 972).

Third party trustee mechanism not envisioned. — The Council in using the words "legal capacity" could not have envisioned the trust mechanism where the legal capacity to hold real estate would be in a third party trustee. *Rock Creek Gardens Tenants Ass'n v. Ferguson* (D.C. 1979, 404 A.2d 972).

§ 45-1699.10. Conversion of a housing accommodation to a cooperative.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a cooperative shall be notified in writing of the landlord's intent to convert the housing accommodation to a cooperative not less than one hundred and twenty (120) days before the conversion thereof. The landlord shall also make to each tenant of the housing accommodation a bona fide offer of sale of the rental unit which such tenant occupies. The offer shall include, but not be limited to, the asking price for the rental unit and a statement of the tenant's right to purchase the rental unit under the provisions of this section. The tenant shall be afforded not less than sixty (60) days in which to contract with the landlord for the purchase of the unit at a mutually agreeable price and under mutually agreeable terms.

(b) No tenant shall be served with a notice to vacate until ninety (90) days after the tenant received notice of the owner's intent to convert and prior to the expiration of the sixty (60) day period required under subsection (a) of this section or receipt of the tenant's written rejection of the bona fide offer of sale of the rental unit, whichever occurs first.

(c) Nothing in this section shall be construed to permit the conversion of rental units to cooperative units where otherwise prohibited by law. (Mar. 16, 1978, D.C. Law 2-54, § 603, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 5-1305, 5-1308, 45-1699.6.

§ 45-1699.11. Conversion of a housing accommodation to another use.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a use other than for non-transient residential occupancy shall be notified in writing of the landlord's intent to convert the housing accommodation not less than one hundred and twenty (120) days before the conversion thereof.

(b) No tenant of a housing accommodation which the landlord seeks to convert to a use other than for non-transient residential occupancy shall be served with a notice to vacate until ninety (90) days after the tenant received notice of the landlord's intent to convert.

(c) Nothing in this section shall be construed to permit the conversion of a housing accommodation as defined by section 45-1681 (f) to a use other than for non-transient residential occupancy if the conversion is otherwise prohibited by law. (Mar. 16, 1978, D.C. Law 2-54, § 604, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1699.6.

Title VII.—Substantial Rehabilitation of Housing Accommodations from Which a Tenant Was Evicted

§ 45-1699.12. Applicability of provisions.

The provisions of this title apply to the substantial rehabilitation of:

(a) any housing accommodation with respect to which the landlord has notified the tenants of the rental units therein, after the effective date of this subchapter, of the landlord's intent to substantially rehabilitate; or

(b) any housing accommodation with respect to which the landlord has notified the tenants of the rental units therein prior to the effective date of this subchapter of the landlord's intent to substantially rehabilitate.

(Mar. 16, 1978, D.C. Law 2-54, § 701, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1699.19, 45-1699.20.

§ 45-1699.13. Petition for adjustment in rent ceiling due to substantial rehabilitation.

A landlord of a housing accommodation for which the allowable rent ceiling is computed according to section 45-1687 from which any tenant of any rental unit therein would be evicted for the purpose of substantial rehabilitation, must petition the Rent Administrator in order to substantially rehabilitate the housing accommodation and for an adjustment in the allowable rent ceiling upon completion of the substantial rehabilitation. The landlord's petition shall be filed and considered in accordance with the adjustment procedure set forth in section 45-1695. (Mar. 16, 1978, D.C. Law 2-54, § 702, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.14. Criteria for approving petition.

(a) In determining whether to approve a petition for substantial rehabilitation of a housing accommodation from which any tenant must be evicted, the Rent Administrator shall:

(1) consider the impact of the proposed substantial rehabilitation on the tenants of the housing accommodation;

(2) consider the existing condition of the housing accommodation and the rental units contained therein and the degree to which any violations of the Housing Regulations constitute an impairment to the health, welfare and safety of the tenants;

(3) examine the plans, specifications and projected costs for the substantial rehabilitation, all of which shall be made available to the Rent Administrator by the landlord of the housing accommodation; and

(4) evaluate such other factors as the Rent Administrator may deem relevant.

(b) If the Rent Administrator determines that:

(1) a housing accommodation is to be substantially rehabilitated; and

(2) the interests of tenants of the housing accommodation to be substantially rehabilitated have been fully considered, then the Rent Administrator shall approve, contingent upon the actual completion of the substantial rehabilitation in accordance with the plans, specifications and at a cost equal to or exceeding fifty percent (50%) of the market value of the housing accommodation, and adjustment in the allowable rent ceiling for the rental units contained in the housing accommodation.

(Mar. 16, 1978, D.C. Law 2-54, § 703, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1699.15.

§ 45-1699.15. Amount of adjustment in rent ceiling for substantial rehabilitation.

On making the determination permitted by section 45-1699.14 (b) for a housing accommodation to which title II of this subchapter is applicable, the Rent Administrator may approve for each rental unit in the housing accommodation, an adjustment in the rent ceiling during the initial leasing period or the first year of tenancy following completion of the substantial rehabilitation of the housing accommodation which is no greater than the equivalent of one hundred and twenty-five percent (125%) of the rent ceiling applicable to that rental unit in the housing accommodation prior to substantial rehabilitation. For purposes of the application of the provisions of section 45-1687, thereafter, the rent ceiling as adjusted is deemed to be the equivalent of making the computations specified in section 45-1687(a). (Mar. 16, 1978, D.C. Law 2-54, § 704, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.16. Notice of intent to substantially rehabilitate.

(a) The landlord of a housing accommodation which the landlord intends to substantially rehabilitate shall provide the tenants of every rental unit therein with a written statement of intent to substantially rehabilitate at least one hundred and twenty (120) days prior to the commencement of the substantial rehabilitation.

(b) The landlord's written statement of intent to substantially rehabilitate the housing accommodation shall be on such form and contain such information as the Commission, by regulation, may require. (Mar. 16, 1978, D.C. Law 2-54, § 705, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in section. 45-1699.6.

§ 45-1699.17. Notice to vacate for substantial rehabilitation.

No tenant shall be served with a notice to vacate any rental unit in a housing accommodation which the landlord intends to substantially rehabilitate until ninety (90) days after the tenant received the landlord's statement of intent to substantially rehabilitate the housing accommodation in which the tenant resides. (Mar. 16, 1978, D.C. Law 2-54, § 706, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.18. Tenant's right to re-rent.

Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to re-rent the rental unit immediately upon the completion of the substantial rehabilitation. (Mar. 16, 1978, D.C. Law 2-54, § 707, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

**Title VIII. — Relocation Assistance for Tenants Displaced by
Substantial Rehabilitation, Demolition, or
Housing Discontinuance**

§ 45-1699.19. Notice of right to relocation assistance.

No landlord shall substantially rehabilitate, demolish or discontinue any housing accommodation unless there has first been served upon each tenant residing therein a written notice of intent to rehabilitate, demolish or discontinue the housing accommodation, in accordance with sections 45-1699.12, 45-1699.6 (b) (5) (B) or 45-1699.6 (b) (5) (D). Such notice shall advise the tenants of their right to relocation assistance under this act or any other D.C. Law, and the procedures for applying for such assistance. The Commission shall prescribe the content of such notice. No tenant may be evicted from a housing accommodation which the landlord intends to substantially rehabilitate, demolish or discontinue (or which the landlord intends to sell to another person who, to the landlord's knowledge, intends to substantially rehabilitate, demolish or discontinue it), unless this section has been complied with. Nothing contained in this section shall be construed to limit a landlord's right to evict a tenant for non-payment of rent or violation of an obligation of the tenancy provided such action to evict is in compliance with section 45-1699.6. (Mar. 16, 1978, D.C. Law 2-54, § 801, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-121, amended section by rewriting the first and fourth sentences.

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25

DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

§ 45-1699.20. Eligibility requirements for relocation assistance.

Each landlord commencing substantial rehabilitation, demolition, or housing discontinuance on or after the effective date of this subchapter, shall pay relocation assistance in an amount calculated pursuant to section 45-1699.21, to all tenants of such housing accommodation who:

(a) were living in the rental units contained therein from which they are being displaced at the time the notice required by sections 45-1699.12, 45-1699.6(b) (5) (B) or 45-1699.6(b) (5) (D) is given; and

(b) are displaced from rental units because such housing accommodation in which they are located is to be substantially rehabilitated or demolished.

(Mar. 16, 1978, D.C. Law 2-54, § 802, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting "or demolition" and inserting in lieu thereof ", demolition, or housing discontinuance" and by deleting "section 45-1699.12 or section 45-1699.6 (b) (5) (B)" and inserting in lieu thereof the words "sections 45-1699.12, 45-1699.6 (b) (5) (B) or 45-1699.6 (b) (5) (D)."

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 2-121. See note to § 45-1699.6.

§ 45-1699.21. Relocation assistance payments.

(a) The amount of relocation assistance payable to a displaced tenant shall be calculated as follows:

(1) Relocation assistance in the amount of one hundred and twenty-five dollars (\$125.00) for each room in the rental unit shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of this section, a "room" in a rental unit means any space sixty (60) square feet or larger which has a fixed ceiling and a floor and is subdivided with fixed partitions on all sides, but does not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms or the like.

(2) The Mayor shall adjust the amount to be paid tenants for relocation assistance from time to time in order to reflect changes in the cost of moving within the Washington Metropolitan Area. Such adjustments shall be made pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.), not more than once in any calendar year.

(b) Relocation assistance shall be paid to eligible tenants, not later than twenty-four (24) hours prior to the date the rental unit is to be vacated by the tenant(s) or subtenant(s): Provided, that the landlord has received at least ten (10) days (excluding Saturdays, Sundays and holidays) advance written notice of the date upon which the unit is to be vacated. Where the tenant does not provide the landlord with at least a ten (10) day notice, the relocation assistance shall be paid within thirty (30) days after the unit is vacated.

(c) Payment of relocation assistance shall not be required with respect to any rental unit which is the subject to an outstanding judgment for possession obtained by the landlord or landlord's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of intention to rehabilitate, demolish, or discontinue housing use. If, however, the judgment for possession is based upon non-payment of rent and arises after the notice of intent to rehabilitate or to demolish has been given, then relocation assistance shall be required in an amount reduced by the amount determined to be due and owing to the landlord by the court rendering the judgment for possession. (Mar. 16, 1978, D.C. Law 2-54, § 803, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting "or to demolish" and inserting in lieu thereof ", demolish, or discontinue housing use."

Emergency Act Amendments.

1978 — For temporary amendment of section, see the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and

sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

Legislative History of Law 2-54. See note to § 45-1681.

Legislative History of Law 1-121. See note to § 45-1699.6.

Section referred to in section. 45-1699.20.

§ 45-1699.22. Relocation advisory services.

In ascertaining the relocation needs of tenants displaced by substantial rehabilitation, demolition, or housing discontinuance, the standards set forth in section 5-1296 (a) shall be used. (Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Effect of Amendment.

1978 — Act October 13, 1978, D.C. Law 2-121, amended section by deleting "or demolition," and inserting in lieu thereof ", demolition, or housing discontinuance,".

Emergency Act Amendments.

1978 — For temporary amendment of section, see the First Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-246, Aug. 1, 1978, 25 DCR 1504); and

sec. 2 of the Second Emergency Housing Discontinuance Regulation Act of 1978 (D.C. Act 2-289, Oct. 25, 1978, 25 DCR 4327).

1979 — For temporary amendment of section, see sec. 11 of the First Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-2, Jan. 25, 1979, 25 DCR 7680); sec. 11 of the Second Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-37, May 4, 1979, 25 DCR 9918); and sec.

11 of the Third Emergency Cooperative Regulation Act of 1979 (D.C. Act 3-79, Aug. 3, 1979, 26 DCR 642).

Legislative History of Law 2-121. See note to § 45-1699.6.

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.23. Tenant hot line.

Within thirty (30) days from the effective date of this subchapter the Rental Accommodations Commission shall establish a "Tenant Hot Line". The primary purpose of this hot line is to provide assistance to low and moderate income tenants. To carry out this purpose, the functions and responsibilities shall include but not be limited to the following:

(a) answering rent control procedural questions, and directing tenants toward possible courses of action in resolving problems;

(b) providing advice on housing code violations;

(c) explaining rent increases;

(d) providing guidance on emergency shelter;

(e) providing guidance on housing assistance programs;

(f) providing guidance in resolution of water, heating, repairs and other problems;

(g) providing advice on possible action in response to allegations of harassment or neglect by landlords;

(h) answering preliminary questions about remedies through the courts;

(i) providing guidance when tenants are faced with eviction; and

(j) providing guidance on other tenant problems.

(Mar. 16, 1978, D.C. Law 2-54, § 805, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Title IX. — Miscellaneous Penalties; Severability; Supersedence; Service; Effective Date; Termination

§ 45-1699.24. Penalties.

(a) Any person who:

(1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of title II of this subchapter; or

(2) substantially reduces or eliminates related services previously provided for a rental unit shall be held liable by the Rent Administrator, or Commission, as applicable, for treble the amount by which the rent exceeds the applicable rent ceiling or for seventy-five dollars (\$75.00), whichever is greater and/or for a rollback of the rent to such amount as the Rent Administrator or Commission shall determine.

(b) (1) Any person who willfully collects a rent increase after the same has been disapproved under this subchapter (until and unless such disapproval has been reversed by a court of competent jurisdiction); or

(2) any party who willfully makes a false statement in any document filed under this subchapter; or

(3) any person who willfully commits any other act in violation of any provision of this subchapter or of any final administrative order issued pursuant to this subchapter; or

(4) any person who willfully fails to do anything required under this subchapter, shall be fined not more than five thousand dollars (\$5,000.00) for each violation.

(c) Any landlord who has provided relocation assistance under this subchapter may bring a civil action to recover the amount of relocation assistance paid to any person who was not eligible to receive such assistance.

(d) Any person who knowingly or willfully makes a false or fraudulent application, report or statement in order to obtain, or for the purpose of obtaining any rental supplement grant or payment; or any person ceasing to become eligible for such grant or payment and who does not immediately notify the Mayor of his ineligibility, shall be fined not more than five thousand

dollars (\$5,000.00) for each offense. Such person found guilty of making false or fraudulent reports or statements or of failing to promptly notify the Mayor of his ineligibility shall repay to the District of Columbia any and all amounts paid by the District of Columbia in reliance on such false or fraudulent application, report or statement, or all amounts paid after eligibility ceases, and shall be liable for interest on such amounts at the rate of one-half of one percent ($\frac{1}{2}\%$) per month until repaid. (Mar. 16, 1978, D.C. Law 2-54, § 901, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.25. Severability.

If any provision of this subchapter or any section, sentence, clause, phrase or word or the application thereof, shall in any circumstances be held invalid, the validity of the remainder of the subchapter and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (Mar. 16, 1978, D.C. Law 2-54, § 902, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

§ 45-1699.26. Service.

(a) Unless otherwise provided by the Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of such documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

(1) by handing the document to the person, by leaving it at such person's place of business with some responsible person in charge or by leaving it at the person's usual place of residence with a person of suitable age and discretion then present therein; or

(2) by telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid; or

(3) by mail, or deposit with the United States Postal Service properly stamped and addressed; or

(4) by any other means that is in conformity with an order of the Commission or the Rent Administrator in any proceeding.

(b) No rent increases, whether pursuant to this subchapter, the Rental Accommodations Act of 1975, D.C. Law 1-33, effective November 1, 1975, as amended by the Rental Accommodations Act Amendments of 1976, D.C. Law 1-122 (former D.C. Code sec. 45-1631 et seq.) or any administrative decisions issued thereunder, shall be effective until the first day on which rent is normally paid occurring more than thirty (30) days after notice of such increase is given the tenant. (Mar. 16, 1978, D.C. Law 2-54, § 904, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

Section referred to in sections. 45-1689, 45-1690, 45-1695.

§ 45-1699.27. Termination.

This subchapter shall terminate on September 30, 1980. (Mar. 16, 1978, D.C. Law 2-54, § 906, 24 DCR 5334.)

Legislative History of Law 2-54. See note to § 45-1681.

CHAPTER 18. — HOME PURCHASE ASSISTANCE FUND

Sec.

45-1801. Established.

45-1802. Deposits to credit of fund.

45-1803. Availability.

45-1804. Promulgation of rules and regulations —
Contents of loan agreements.

Sec.

45-1805. Annual audit — Compensation of deficiencies in
working capital.**§ 45-1801. Established.**

There is hereby established in the District of Columbia and there is authorized, to be appropriated out of the revenues of the District of Columbia, funds not to exceed one million dollars (\$1,000,000) for a permanent revolving fund to be known as the Home Purchase Assistance Fund (hereinafter referred to as the "fund") to provide financial assistance to residents of the District of Columbia of lower incomes for the purposes of enabling them to purchase decent, safe and sanitary homes in the District of Columbia. (Sept. 12, 1978, D.C. Law 2-103, § 2, 25 DCR 1977.)

Emergency Act Amendments.

1978 — For temporary enactment of chapter, see the Home Purchase Assistance Fund Emergency Authorization Act of 1978 (D.C. Act 2-213, July 1, 1978, 25 DCR 1972).

1979 — For temporary amendment of section, see sec. 2 of the Emergency Home Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-38, May 7, 1979, 25 DCR 10140); and sec. 2 of the Second Emergency Home Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-85, Aug. 14, 1979, 26 DCR 872).

Legislative History of Law 2-103. Law 2-103 was introduced in Council and assigned Bill No. 2-316, which

was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-214 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of Sept. 12, 1978, D.C. Law 2-103, 25 DCR 1977, provided "That this act may be cited as the 'Home Purchase Assistance Fund Act of 1978.'"

§ 45-1802. Deposits to credit of fund.

There shall be deposited to the credit of the fund such amounts as may be appropriated pursuant to this chapter grants and gifts from public and private sources to the fund or to the District of Columbia for the purposes of the fund; repayments of principal and any interest on loans provided from the fund; proceeds realized from the liquidation of any security interests held by the District of Columbia under the terms of any assistance provided the fund; interest earned from the deposit or investment of monies of the fund; and all other revenues, receipts and fees of whatever nature derived from the operation of the fund. (Sept. 12, 1978, D.C. Law 2-103, § 3, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

Compiler's change. The second "of" in the third line of this section appeared in the original act as "or."

§ 45-1803. Availability.

The fund shall be available, without fiscal year limitation, for making loans; for providing other forms of financial assistance under terms and conditions prescribed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"); and for the principal purpose of enabling a recipient thereof to make a down payment toward the purchase of a home in the District of Columbia as his principal place of residence. Such financial assistance may be used in conjunction with other available home purchase assistance programs. Where the applicable law or regulations of such other programs prohibit assistance in the form of loans, the Mayor is authorized to provide other forms of financial assistance. (Sept. 12, 1978, D.C. Law 2-103, § 4, 25 DCR 1977.)

Legislative History of Law 2-103. See note to § 45-1801.

§ 45-1804. Promulgation of rules and regulations — Contents of loan agreements.

(a) The Mayor is authorized to promulgate rules and regulations to govern the operation of the fund, including but not limited to, rules and regulations establishing standards for determining the eligibility and selection of applicants; procedures for applying for assistance and for notifying applicants (including the development of appropriate forms); and criteria for determining the terms and conditions under which loans or other forms of financial assistance may be made from the fund which, among things, shall reflect the ability of the recipient to pay and may provide for the deferred payment or forgiveness of loans. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this chapter shall be submitted by the Mayor to the Council of the District of Columbia for a forty-five (45) calendar day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the forty-five (45) calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period, the Council does not adopt a resolution disapproving such rules and regulations in whole or in part.

(b) Any loan agreement entered into pursuant to such rules and regulations shall provide that:

(1) all applications for and recipients of financial assistance from the fund shall be residents of the District of Columbia and a member of a household consisting of two (2) or more persons who are related by blood or marriage; and

(2) if the home purchased ceases to be the primary residence of the recipient of financial assistance from the fund, the payments to such fund by the recipient shall be accelerated on terms and conditions prescribed by the Mayor: Provided, that such obligation shall not be inconsistent with the applicable law or regulations of any federal home purchase assistance program made available to the recipient.

(Sept. 12, 1978, D.C. Law 2-103, § 5, 25 DCR 1977.)

Emergency Act Amendments.

1979 — For temporary addition of subsection (c), see sec. 2 of the Emergency Home Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-38, May 7, 1979, 25 DCR 10140); and sec. 2 of the Second Emergency Home

Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-85, Aug. 14, 1979, 26 DCR 872).

Legislative History of Law 2-103. See note to § 45-1801.

§ 45-1805. Annual audit — Compensation of deficiencies in working capital.

(a) An annual audit of the operations of the fund shall be conducted by the District of Columbia Office of Internal Audits and Inspections.

(b) Not later than six (6) months after the end of each fiscal year, the Mayor shall submit to the Congress of the United States and to the Council of the District of Columbia a report of the financial condition of the fund and the results of the operations for such fiscal year.

(c) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year and there is authorized, to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be required to compensate any deficiency in the working capitalization of one million dollars (\$1,000,000) for the funds. (Sept. 12, 1978, D.C. Law 2-103, § 6, 25 DCR 1977.)

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the Emergency Home Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-38, May 7, 1979, 25 DCR

10140); and sec. 2 of the Second Emergency Home Purchase Assistance Fund Expansion Act of 1979 (D.C. Act 3-85, Aug. 14, 1979, 26 DCR 872).

Legislative History of Law 2-103. See note to § 45-1801.

CHAPTER 19. — HOUSING FINANCE AGENCY.

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Subchapter I. — Policy and Definitions

§ 45-1901. Declaration of policy.

(a) The Council of the District of Columbia hereby finds: That a decline in the number of housing units in the District of Columbia, together with the existing number of substandard dwellings, has produced a critical shortage of adequate housing for low and moderate income families; that this shortage of affordable housing and the inability of residents to obtain appropriate financing compels a substantial number of District residents to live in unsanitary, overcrowded and unsafe conditions and to expend a disproportionate portion of their incomes on housing; that these conditions are detrimental to the health and welfare of District residents and adversely affect the economy of the District; that a major cause of this housing crisis is the cost of funds made available by mortgage lenders in the District to finance housing for low and moderate income families; and further that this situation has frustrated the construction, lease, sale and purchase of housing units for low and moderate income families.

(b) The Council determines that a corporate instrumentality of the District shall be created and given authority to generate funds from private and public sources to increase the supply and lower the cost of funds available for residential mortgages and construction loans and thereby help alleviate the shortage of adequate housing. The Council further determines that this purpose can be accomplished through programs whereby mortgage lenders and/or the Agency make mortgage, construction and rehabilitation loans for single and multifamily rental and home ownership units on terms designed to expand available housing opportunities. The Council further determines that the goals of neighborhood and fiscal stability can be achieved through a policy of residential economic diversity.

(c) The Council hereby declares that the enactment of this chapter is in the public interest and for the public benefit, and that the authority and powers conferred by this chapter and the expenditure of monies pursuant to this chapter are to serve valid public purposes. (Mar. 3, 1979, D.C. Law 2-135, § 101, 25 DCR 5008.)

Legislative History of Law 2-135. Law 2-135 was introduced in Council and assigned Bill No. 2-161, which was referred to the committee on Housing and Urban Development. The Bill was adopted on first and second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-291 and transmitted to both Houses of Congress for its review.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-135, provided: "That this act may be cited as the 'District of Columbia Housing Finance Agency Act.'"

§ 45-1902. Definitions.

The following terms as used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

- (a) "Chapter" means this Housing Finance Agency Act.
- (b) "Agency" means the District of Columbia Housing Finance Agency.
- (c) "Board" means the Board of Directors of the District of Columbia Housing Finance Agency.
- (d) "bonds", "notes" and "other obligations" refer to any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness of the Agency authorized to be issued under the provisions of this chapter.
- (e) "Council" means the Council of the District of Columbia.
- (f) "construction loan" means a short term advance of monies for the purpose of constructing or rehabilitating residential housing.
- (g) "District" means the District of Columbia.
- (h) "eligible persons" means individuals and families who qualify for housing under a given program according to the requirements of the program as authorized by this chapter and rules and regulations promulgated by the Agency pursuant to such requirements.
- (i) "Forward Commitment Mortgage Purchase Program" means a program pursuant to which the Agency commits to purchase from mortgage lenders mortgage loans committed to and originated by the mortgage lender after the date of the Agency's commitment where the loans are to low or moderate income persons for financing housing units to be owner-occupied or are loans which meet the requirements of section 45-1909 (b) or (c).
- (j) "homeownership program" means any type of program through which a person can achieve an ownership position in a residential unit including, but not limited to, cooperatives and condominiums.
- (k) "housing project" means a number of dwelling units located in the District of Columbia assisted by the Agency under the provisions of this chapter including, but not limited to, units acquired, financed, refinanced, constructed, rehabilitated and/or converted to a condominium or a cooperative with the assistance of the Agency. A project may incorporate ancillary facilities which may include:
 - (1) necessary or desirable appurtenances to residential housing such as, but not limited to, streets, sewers, utilities, parks and stores, as the Agency determines to be appropriate;
 - (2) such community facilities including, but not limited to, health, recreational, educational and welfare facilities, as the Agency determines to be appropriate; and
 - (3) ancillary commercial facilities which the Agency determines to be necessary to make the remainder of the project financially feasible: Provided, however, that the primary use of the project shall be for residential housing.
- (l) "low-income persons" means persons and families whose annual income as determined by the Agency does not exceed the following percentages of the median Standard Metropolitan Statistical Area (SMSA) family income for the District of Columbia, as such SMSA family income may be revised from time to time.

| Family Size | Percentage of SMSA Median Family Income |
|-------------|--|
| 1 | 50.4% |
| 2 | 57.6% |
| 3 | 64.8% |

| Family Size | Percentage of SMSA Median Family Income |
|-------------|--|
| 4 | 72.0% |
| 5 | 76.5% |
| 6 | 81.0% |
| 7 | 85.5% |
| 8 | 90.0% |

The Agency shall adjust upward from 90.0% the percent of SMSA Median Family Income by 4.5% for every additional family member over eight (8) persons.

(m) “moderate income persons” means persons and families whose annual income as determined by the Agency does not exceed one hundred twenty percent (120%) of the median Standard Metropolitan Statistical Area (SMSA) family income (as such SMSA family income may be revised from time to time) applied to an eight (8) or more person household and adjusted downward for household size in accordance with a formula adopted by the Agency.

(n) “mortgage” means an interest in real property located within the District of Columbia which is improved or to be improved by one or more housing units, which interest secures a mortgage loan or participation in a mortgage loan and constitutes a lien on the fee simple interest in such real property or on a leasehold interest therein having an unexpired term longer than the term in which the mortgage loan secured is to be amortized.

(o) “mortgage lender” means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in the District, or any insurance company authorized to do business in the District and deemed eligible by the Agency to participate in any of its programs.

(p) “mortgage loan” means an obligation secured by a mortgage issued for the purposes of financing residential housing.

(q) “sponsor” means a sole proprietor, joint venture, partnership, limited partnership, trust, corporation, cooperative, or condominium, whether nonprofit or organized for profit, which owns a housing project pursuant to the provisions of this chapter.

(r) “subsidy” means any resources generated through appropriation by the federal or District government, or donated by a public or private source; the resources must be designated for meeting housing expense and may be payments to the occupant of a housing unit as reimbursement for monies expended, payment made for supplementing housing or rent payments made by an occupant, or payments made to effect a reduction in mortgage interest rates paid by the mortgagor of a housing unit.

(Mar. 3, 1979, D.C Law 2-135, § 102, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Subchapter II.—Establishment of the Agency

§ 45-1903. Creation of the Agency.

The District of Columbia Housing Finance Agency is created as a corporate body which has a legal existence separate from the government of the District but which is an instrumentality of the government of the District created to effectuate certain public purposes. (Mar. 3, 1979, D.C. Law 2-135, § 201, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1904. Board of Directors.

(a) The Agency shall be governed by a Board of Directors, which shall be comprised of nine (9) members as follows:

- (1) three (3) ex officio members who shall be:

- (A) the Director of the Department of Housing and Community Development;
 - (B) the Director of the Office of Municipal Planning; and
 - (C) the Director of the Office of Budget and Management Systems;
 - (2) six (6) public members, being residents of the District, of whom:
 - (A) two (2) shall have experience in mortgage lending or finance;
 - (B) two (2) shall have experience in home building, real estate, architecture or planning;
- and

(C) two (2) shall represent community or consumer interests.

(b) The six (6) public members of the Board shall be appointed by the Mayor on or after February 1, 1979, with the advice and consent of the Council. Not more than five (5) of the public members shall belong to the same political party. Each ex officio member may designate a representative to perform his respective duties and powers under this chapter, including the power to vote. Notwithstanding the provisions of any other law, no officer or employee of the District shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the Board or his service thereon.

(c) Of the six (6) public members first appointed to the Board, three (3) shall be appointed to terms of office expiring in one (1) year and the remaining three (3) to terms of office expiring in three (3) years, after which their successors shall be appointed to terms of office of four (4) years each. The Mayor or the Board may remove any of the six (6) public members of the Board for inefficiency, neglect of duty or misconduct in office, after giving such member a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense upon not less than ten (10) days notice. Removal of a public member by action of the Board shall require the affirmative vote of six (6) members. If any public member shall be removed by the Board, the Board shall promptly notify the Mayor of such action. Vacancies in the public membership of the Board shall be filled for the unexpired term of the vacant member by appointment by the Mayor and approval by the Council. Each public member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any public member shall be eligible for reappointment.

(d) The Board shall elect from among their number a chairperson, vice-chairperson and such other officers as they may determine. The chairperson shall be elected from among the public members.

(e) The powers of the Agency shall be vested in the Board. Five (5) members of the Board shall constitute a quorum for the transaction of business, and an affirmative vote of at least five (5) members shall be necessary for valid Agency action. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and perform all duties of the Agency. Members of the Board shall be reimbursed for actual and necessary expenses incurred while engaged in services for the Agency. Members of the Board not otherwise employed by the District may also receive per diem compensation at the rate equal to the daily equivalent of Grade 15 of the General Schedule established under section 5332 of Title 5 of the United States Code, with a limit of \$8,000 per annum. (Mar. 3, 1979, D.C. Law 2-135, § 202, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1905. Employees.

(a) The Board of Directors shall appoint an Executive Director who shall be an employee of the Agency, but who shall not be a member of the Board, and who shall serve at the pleasure of the Board and receive such compensation as shall be fixed by the Board. The Executive Director shall administer, manage and direct the affairs and activities of the Agency in accordance with the policies, control and direction of the Board. The Executive Director shall approve all accounts for salaries, allowable expenses of the Agency or of any employee or consultant thereof, and expenses incidental to the operation of the Agency. He shall perform such other duties as may be directed by the Board in carrying out the purposes of this chapter.

(b) The Executive Director shall be Secretary to the Board. He shall attend the meetings of the Board, shall keep a record of the proceedings of the Board, and shall maintain and be custodian of all books, documents and papers filed with the Board, of the minutes book or journal of the Board and of its official seal.

(c) The Agency may employ on a permanent or temporary basis technical advisors, accountants, legal counsel, appraisers and such other officers, agents and employees it deems necessary to operate the Agency efficiently, and shall determine their qualifications, duties and compensation without regard to federal or District Civil Service or classification laws. Federal or District employees employed by the Agency may retain all rights and privileges under the federal or District employees' retirement systems. Appointments, promotions and separations may be based on merit only. Title 5, chapter 53, subchapter III of the United States Code applies to the Board and employees of the Agency to the same extent as to District employees. (Mar. 3, 1979, D.C. Law 2-135, § 203, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1906. Conflict of interest.

Any member, officer or employee of the Agency who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested directly or indirectly in any transaction with the Agency including, but not limited to, any loan to any sponsor, builder or developer, shall disclose this interest to the Agency. This interest shall be set forth in the minutes of the Agency, and the member, officer, or employee having the interest shall not participate on behalf of the Agency in the authorization or implementation of any such transaction. The Board by two-thirds ($\frac{2}{3}$) majority vote may allow a waiver of a member's, officer's or employee's inability to participate in circumstances where the interest falls within guidelines adopted as rules promulgated by the Board. (Mar. 3, 1979, D.C. Law 2-135, § 204, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1907. Requirement for surety bonding.

Each member of the Board shall execute a surety bond in the penal sum of \$25,000, and the Executive Director of the Agency shall execute a surety bond in the penal sum of \$50,000. Each surety bond shall be conditioned upon the faithful performance of the official duties of the person bonded, issued by a surety company authorized to transact business as a surety in the District, approved by the Corporation Counsel of the District, and filed in the office of the District Department of Insurance. All costs of the surety bonds shall be borne by the Agency. (Mar. 3, 1979, D.C. Law 2-135, § 205, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Subchapter III. Operations of the Agency

§ 45-1908. General powers.

The Agency is hereby granted all powers necessary or convenient to effectuate its corporate purposes, including but not limited to, the following:

- (a) to have perpetual succession;
- (b) to sue and be sued in its own name;
- (c) to have an official seal and power to alter that seal at will;
- (d) to maintain an office at such place or places within the District as it may designate;
- (e) to adopt, amend and repeal bylaws, rules and regulations to carry out its purposes under this chapter;

(f) to make and execute contracts and all other instruments for the performance of its duties under this chapter including, but not limited to, contracts or agreements for the servicing and originating of mortgage loans;

(g) to employ advisers, consultants, and agents including, but not limited to, financial advisers, appraisers, accountants and legal counsel, and to fix their compensation;

(h) to collect reasonable interest, fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(i) to procure insurance or self-insure against any loss in connection with its property and other assets, including mortgage loans, in such amounts and from such insurers as it deems desirable;

(j) to borrow money and to issue bonds, notes or other evidences of indebtedness and to give security therefor;

(k) to enter into agreements with the United States or any agency, department, instrumentality or political subdivision thereof, to provide that interest on any bonds, notes or other evidences of indebtedness of the Agency will be subject to federal income taxes;

(l) to contract for and to receive contributions of money, property, labor or other things of value from any source, to be used for the purposes of this chapter and subject to the conditions upon which the contributions are made. Such contributions may include, but are not limited to, gifts or grants from any department, agency or instrumentality of the United States or of the District;

(m) to enter into agreements with any department, agency or instrumentality of the United States or the District and with sponsors and mortgage lenders for the purpose of planning, regulating and providing for the financing and refinancing, construction, reconstruction or rehabilitation, leasing, management, maintenance, operation, acquisition, sale or other disposition of any housing project undertaken with the assistance of the Agency under this chapter;

(n) to proceed with foreclosure action, to take assignments of leases and rentals, to acquire property in lieu of foreclosure;

(o) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, encumber, sell or otherwise dispose of any real or personal property if (1) the property was obtained by the Agency due to the default of any obligation held by the Agency; and (2) the Agency's actions, as provided in this subsection, are in preparation for disposition of such properties;

(p) to invest any funds not required for immediate disbursement, including funds held in reserve, in investments; the income derived from the investment shall be deposited as provided in section 45-1926;

(q) to provide technical assistance to profit and nonprofit entities in the development or operation of housing for low and moderate income persons in accordance with section 45-1914; to gather and distribute data and information concerning the housing needs of low and moderate income persons within the District;

(r) to the extent permitted under its contract with the holders of bonds, notes and other obligations of the Agency, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, or contract or agreement of any kind to which the Agency is a party;

(s) to sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by the Agency pursuant to regulations promulgated by the Agency;

(t) to make construction loans in keeping with the public purposes of this chapter; and

(u) to do any act necessary or convenient to the exercise of the powers granted by or reasonably implied from this chapter.

(Mar. 3, 1979, D.L. Law 2-135, § 301, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1909. Loans to sponsors.

(a) *Authorization.* — (1) The Agency may make, participate in making, and undertake commitments to make or participate in making mortgage loans to sponsors for the financing of housing projects for eligible persons. Such housing projects must meet the requirements of subsection (b) or (c) of this section.

(2) The Agency may make, participate in making, and undertake commitments to make or participate in making construction loans to sponsors for construction, reconstruction or rehabilitation of housing projects for eligible persons. Such housing projects must meet the requirements of subsection (b) or (c) of this section.

(b) *Rental housing program requirements.* — (1) *Tenant income mixtures.* (A) With respect to each rental housing project, the sponsor shall submit a tenant selection plan which must be reviewed and approved by the Agency prior to the final commitment to assist the project. The plan must provide that a minimum of fifteen percent (15%) of the units are initially rented to low-income persons. In addition, the plan must provide for a heterogeneous mixture of low, moderate and above moderate income persons to the extent that, in the discretion of the Agency, such a mixture is made possible by the availability of below market financing and rental market conditions. The Agency is not prohibited from financing a rental housing project in which all tenants or all units are eligible for one or more subsidies, when the economic feasibility of the housing project or conditions in the rental market and in the bond market prevent the Agency from meeting its objective of financing housing serving a balanced mixture of income groups.

(B) With respect to all rental housing projects for which the Agency has provided commitments for financing during each two-year period, the aggregate number of units rented to low-income persons, as provided in the tenant selection plans approved by the Agency, must not be less than twenty-five percent (25%). The first two-year period concludes at the end of the Agency's second full fiscal year following the date of the Agency's first rental housing loan commitment. If the Agency fails to meet the twenty-five percent (25%) requirement for any given two-year period, the Agency, in its annual report for the second year of the subject period, must submit explanation and documentation to justify its failure to meet this requirement. Within sixty (60) days from the date the Council receives the annual report, the Council, by resolution, may relieve the Agency of further requirements as regards the subject two-year period, or require the Agency to finance a specified number of low-income rental units in addition to the twenty-five percent (25%) requirement for the succeeding two-year period. The resolution may not require a greater number of additional low-income rental units than would have been sufficient to meet the twenty-five percent (25%) requirement for the subject period. In the event the Council does not act by resolution within sixty (60) days from the date of receipt of the annual report, the Agency shall be relieved of any further obligation to meet the requirements of the subject period.

(C) Each sponsor shall continue to rent to low-income persons no less than fifteen percent (15%) of the project's total units: Provided, however, that this requirement shall not apply when subsidies available to the sponsor at the time of initial rental are no longer available. Implementation of this provision does not require or sanction eviction of any tenant.

(2) *Tenant income limitations.* (A) Sponsors shall not charge low-income persons annual rent which exceeds twenty-five percent (25%) of annual income except where the Agency makes a determination that the lack of adequate subsidies or other financial considerations make fulfillment of this requirement unattainable.

(B) The annual income of persons initially selected for rental of a unit not rented to low-income persons shall not exceed six (6) times the annual rent charged during the initial leasing period.

(C) Where feasible pursuant to rules promulgated by the Agency, the Agency shall require that rents of nonsubsidized units are affordable to persons of moderate income at rent levels not economically burdensome in proportion to their incomes. The rules promulgated by

the Agency to implement such rent levels for nonsubsidized units shall take into account: (i) the availability of mortgage finance rate reductions for projects in which such units are located; (ii) the percentage of total units in such projects which is rented to tenants of above moderate income and the rents charged such tenants; and (iii) relevant housing market conditions including, but not limited to, the extent of demand for nonsubsidized units in relation to available supply of such units. For the purposes of this subparagraph, the term "mortgage finance rate reduction" means the differential between prevailing mortgage interest rates and a lower rate which is paid by a sponsor of a project for which financing has been made available, directly by the Agency or through a mortgage lender, from the proceeds of a bond or bonds issued by the Agency.

(3) **Limitation on distributions.** A sponsor may not make distributions in any one year, with respect to a rental housing project financed by the Agency, in excess of eight percent (8%) of the sponsor's equity in such housing project. The sponsor's equity in a project shall consist of the difference between the mortgage loan and the total project cost as established by the Agency at the time of the final mortgage advance.

(c) *Homeownership program requirements.* — (1) With respect to each homeownership project, the sponsor shall submit a buyer selection plan which shall be reviewed and approved by the Agency prior to the final commitment to assist the project. The plan must provide that at least fifty percent (50%) of the units are to be initially set aside for sale to low or moderate income persons. To the extent made possible by the availability of below market financing, housing market conditions, and the proportion of unrestricted units, the plan must provide for a heterogeneous mixture of low and moderate income persons. Prices of all units shall be acceptable to the Agency.

(2) The sponsor shall set the sale price of individual units so that total profit does not exceed twenty percent (20%) of total housing project costs as originally projected by the sponsor and accepted by the Agency at the time of its commitment to assist the project.

(Mar. 3, 1979, D.C. Law 2-135, § 302, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Section referred to in sections. 45-1902, 45-1910, 45-1911.

§ 45-1910. Purchase of mortgage loans.

(a) *Authorization.* — The Agency may invest in, purchase, make commitments to purchase, and take assignments from mortgage lenders of mortgage loans made for the financing of residential housing located in the District. Except for loans purchased under the Forward Commitment Mortgage Purchase Program, a mortgage loan is not eligible for purchase or commitment to purchase by the Agency hereunder unless the mortgage lender first certifies that the proceeds of sale or its equivalent will be reinvested in mortgage loans for notes in accordance with subsection (b) (1) of this section. The Agency shall provide, by contract or regulation or both, appropriate methods of enforcement of the mortgage lender's obligation to reinvest the proceeds of sale.

(b) *Mortgage purchase program requirements.* — (1) With respect to the purchase of loans other than under the Forward Commitment Mortgage Purchase Program, the Agency shall require the mortgage lender to reinvest the proceeds as follows, including any combination thereof:

(A) in accordance with the requirements of section 45-1909 (b);

(B) in accordance with the requirements of section 45-1909 (c);

(C) in mortgage loans for low or moderate income persons where the housing units are or are to be owner-occupied.

The Agency shall, through rulemaking, promulgate procedures whereby:

(i) housing projects financed under subparagraph (A) or (B) above are developed and operated so as to comply with the program requirements of section 45-1909 (b) or (c), respectively; and

(ii) loans made under subparagraph (C) above are assured of complying with the requirements of subparagraph (C).

(2) Mortgage loans purchased under the Forward Commitment Mortgage Purchase Program must be made as follows:

(A) in accordance with the requirements of section 45-1909 (b);

(B) in accordance with the requirements of section 45-1909 (c); or

(C) in mortgage loans to low or moderate income persons where the housing units are or are to be owner-occupied.

(3) The Agency shall require that loans made in fulfillment of the reinvestment requirements of paragraph (1) of this subsection are at interest rates which insure that the borrower will benefit to the maximum extent feasible from the below market interest cost of Agency bond and note proceeds used to purchase mortgage loans from the lender under subsection (a) of this section.

(4) The Agency shall purchase mortgage loans at a purchase price not in excess of the unpaid principal balance plus accrued interest thereon.

(Mar. 3, 1979, D.C. Law 2-135, § 303, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1911. Loans of mortgage lenders.

(a) *Authorization.* — The Agency may make loans to mortgage lenders pursuant to an agreement by the recipient to reinvest an amount equal to or greater than the proceeds in accordance with the provisions of subsection (b) of this section.

(b) *Program requirements.* — (1) The Agency will require that the recipient reinvest the proceeds as follows, including any combination thereof:

(A) in accordance with the requirements of section 45-1909 (b);

(B) in accordance with the requirements of section 45-1909 (c);

(C) in loans to individual low or moderate income persons for mortgage loans, where the housing units are or are to be owner-occupied.

The Agency shall, through rulemaking, promulgate procedures whereby:

(i) housing projects financed under subparagraph (A) or (B) above are developed and operated so as to comply with the program requirements of section 45-1909 (b) or (c), respectively; and

(ii) loans made under subparagraph (C) above are assured or complying with the requirements of subparagraph (C).

(2) The Agency shall require that loans made in fulfillment of the reinvestment requirements of paragraph (1) of this subsection are at interest rates which insure that the borrower will benefit, to the maximum extent feasible, from the below market interest cost of the Agency bond and note proceeds used to make the loans to or to purchase the securities from the lender under subsection (a) of this section.

(Mar. 3, 1979, D.C. Law 2-135, § 304, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1912. Supportive programs.

(a) *Rent or interest subsidy.* — The Agency may establish or administer any rent subsidy or homeownership mortgage interest subsidy program to the extent that funds are made available for that purpose by this chapter or by any other source where, by reason of other income or payment by any department, agency or instrumentality of the United States or of the District, the Agency has determined the program can be utilized without jeopardizing the economic stability of housing projects being financed.

(b) *Housing rehabilitation.* — The Agency may establish or administer a housing rehabilitation program for the purpose of providing loans to eligible persons for rehabilitation of residential housing. These loans shall be secured to the satisfaction of the Agency.

(c) *Home purchase assistance.* — The Agency may establish or administer a home purchase assistance program from any excess monies generated from the operation of the Agency, appropriated from any source, or otherwise made available to assist prospective home purchasers to meet down payment requirements for obtaining mortgage financing for residential units.

(d) *Counseling.* — The Agency may establish or may contract with private or public groups and organizations to provide counseling programs for low and moderate income families who may be participating in rental or homeownership assistance activities.

(e) *Mortgage loan guarantee fund.* — The Agency may establish and maintain a special fund called the “mortgage loan guarantee fund” into which shall be deposited monies (1) as may be appropriated by the District for the purpose of the fund; and (2) as the Agency determines to deposit. Monies in the mortgage loan guarantee fund may be used by the Agency to guarantee or insure mortgage loans according to criteria established by the Agency. (Mar. 3, 1979, D.C. Law 2-135, § 305, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1913. Rules and regulations.

(a) The Agency shall make rules and regulations governing all authorized activities including, but not limited to, the following:

(1) procedures for the submission of requests or the invitation of proposals for the purchase and sale of loans and the making of loans;

(2) the number of dwelling units, location of the units and other characteristics of residential housing to be financed by the Agency;

(3) rates, charges and other terms and conditions of originating or servicing loans, in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;

(4) the rent levels and the sales prices, including downpayment requirements, and the allowable adjustments in rent levels and sales prices, of residential units financed by the Agency, in accordance with the program requirements of this chapter;

(5) the type and amount of collateral or security to be provided by borrowers to assure repayment of loans made or purchased by the Agency;

(6) the type of collateral, payment bonds, performance bonds, or other security to be provided for construction loans;

(7) the nature and amounts of fees to be charged by the Agency to provide for expenses and reserves of the Agency; and

(8) any other matters related to the duties or exercise of powers under this chapter.

(b) The Agency’s rules and regulations shall be consistent with the following:

(1) Loans made for residential housing may be prepaid only with the consent of the Agency, which may impose a penalty for prepayment. In the case of housing projects assisted by the Agency, refinancing shall be allowed by the Agency only where refinancing will not abrogate the rights of bondholders or noteholders and will not change the material purpose for which the project was originally assisted.

(2) Preference for assistance under this chapter shall be given to eligible persons displaced as a result of Agency action. Such preference shall include individual notification and the right of first refusal to rent or purchase the unit previously occupied by the displaced person or a comparable unit in other housing projects assisted by the Agency.

(3) Specific loan terms for each program of assistance shall be adopted by the Agency in its rules and regulations, pursuant to the provisions of this chapter.

(A) Such terms shall be consistent with the objective of maximizing the availability of housing opportunities to low and moderate income persons. The Agency shall insure that such terms are properly implemented by participating mortgage lenders, and shall provide and implement a procedure by which loan decisions can be monitored, reviewed, or appealed.

(B) Where a mortgage lender makes residential loans to low or moderate income persons with funds received through Forward Commitment Mortgage Purchase, mortgage purchase, security purchase and loan to lender programs under this chapter, the Agency shall require that the loans are made with terms which meet conditions set out by the Agency, including the following:

(i) Loan terms, criteria and requirements shall be consistent with the objective of providing greater opportunities for home ownership for low and moderate income persons to whom mortgage financing has generally not been available through private lenders; and

(ii) When the projected ratio of monthly payments to family income of a loan applicant exceeds twenty-five percent (25%), the mortgage lender shall not disqualify the loan application on that basis alone.

(4) In the case of federal or District programs in which the Agency may participate, the provisions of this chapter and Agency rules shall apply unless there is a conflict with such a federal or District program.

(5) The Agency shall require that occupancy of all housing financed or otherwise assisted under this chapter be open to all persons, and that such mortgagors, contractors and subcontractors engaged in the construction, rehabilitation, sale or rental of such housing, shall provided equal opportunity for employment without discrimination, in accordance with applicable District and federal laws including, but not limited to the Human Rights Act of 1977 (D.C. Code, sec. 6-2201 et seq.). All contracting and procurement of the Agency and of housing financed or otherwise assisted under this chapter shall be in accordance with applicable District and federal laws including, but not limited to, the Minority Contracting Act of 1976 (D.C. Code, sec. 1-851 et seq.).

(Mar. 3, 1979, D.C. Law 2-135, § 306, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1914. Technical assistance.

(a) The Agency may provide sponsors with technical assistance or loans for consultant services which may be required in the organization, planning or operation of residential housing projects for eligible persons. The Agency may require the sponsor to provide a portion of the value of technical assistance and consultant services in matching funds.

(b) The Agency may, in its discretion, convert a loan to a nonprofit sponsor, or any portion thereof, to a nonobligatory grant, or may consider the value of the loan as a development cost subsumed in any mortgage financing provided to the nonprofit sponsor. (Mar. 3, 1979, D.C. Law 2-135, § 307, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Section referred to in section. 45-1908.

§ 45-1915. Exemption from rent control.

(a) Housing projects assisted by the Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681, et seq.).

(b) The Agency shall establish, by rulemaking, procedures for evictions and protections from retaliatory action for tenants of housing projects exempted from the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.), under subsection (a) of this section. Such procedures and protections shall be in accordance with the applicable provisions of the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.).

(c) The Agency shall establish, by rulemaking, conditions and procedures for relocation assistance to tenants displaced from housing projects which are exempted from the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.), under subsection (a) of this section. Such conditions and procedures shall be in accordance with applicable provisions of the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.).

(d) Each owner of a rental accommodation subject to the provisions of this chapter shall file, simultaneously with the Agency and with the Rental Accommodations Office, an exemption statement which shall contain the following information:

(1) the actual rent for each rental unit in the accommodation, the services included and the facilities and charges therefor;

(2) the number of bedrooms in the rental accommodation; and

(3) a list of any outstanding violations of the Housing Regulations of the District of Columbia (established and authorized by Commissioner's Order No. 55-1503, dated August 11, 1955), applicable to such accommodation.

(e) Tenants of housing projects exempted by this chapter from the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.) who, except for such exemption, would be eligible for rent supplements under Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4), shall have the same rights to such supplements as tenants residing in a project subject to the Rental Housing Act of 1977 (D.C. Code, sec. 45-1681 et seq.).

(f) Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit shall receive notice in writing advising him or her that rent increases for the accommodation are not regulated by the Rent Stabilization Program of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1682 to 45-1697). (Mar. 3, 1979, D.C. Law 2-135, § 308, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Subchapter IV.—Financial Affairs of the Agency

§ 45-1916. Sources of funds.

The Agency may receive and spend gifts, grants, appropriations, bond or note proceeds, property or other assistance from any federal, District or private source in order to exercise the powers delegated by this chapter. (Mar. 3, 1979, D.C. Law 2-135, § 401, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1917. Issuance of bonds and notes.

(a) *Borrowing authority.* — The Agency may by resolution authorize the issuance of bonds and notes or other obligations (hereinafter "bonds or notes") for undertakings authorized by this chapter. In addition, the Agency may issue notes to renew notes and bonds to pay notes, including the interest thereon. Whenever expedient, the Agency may refund bonds by the issuance of new bonds, regardless of whether the bonds to be refunded have matured. The Agency may also issue bonds for a combination of refund, renewal and financing programs authorized by this chapter.

(b) *Obligations of the Agency.* — Except as expressly provided otherwise by the Agency, bonds and notes of the Agency are obligations payable solely from revenues derived from the respective projects which such obligations are issued to finance. The Agency may expressly provide additional security by pledge or contribution from any source in accordance with section 47-247.

(c) *Negotiable instruments.* — Regardless of their form or character, bonds and notes of the Agency are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia (D.C. Code, sec. 28:1-101 et seq.), subject only to the provisions of the bonds and notes for registration.

(d) *No personal liability.* — No director, employee or agent of the Agency is personally liable solely because a bond or note is issued. (Mar. 3, 1979, D.C. Law 2-135, § 402, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1918. Terms for sale of bonds and notes.

(a) *General.* — The Agency may stipulate by resolution the terms for sale of its bonds and notes in accordance with this chapter, including the following:

- (1) the date a bond or note bears;
- (2) the date a bond or note matures; Provided, that notes shall not mature later than ten (10) years from the date of original issuance and bonds shall not mature later than fifty (50) years from the date of original issuance;
- (3) whether bonds are issued as serial bonds, as term bonds, or as a combination of the two;
- (4) the denomination;
- (5) the interest rate;
- (6) the registration privileges;
- (7) the medium and method for payment; and
- (8) the terms of redemption.

(b) *Public or private sale.* — The Agency may sell its bonds or notes at public or private sale and may determine the price for sale.

(c) *Additional provisions part of contract.* — If the resolution authorizing the sale of bonds or notes contains any of the provisions listed below, the provisions must also be part of the contract with holders of the bonds or notes. The provisions in the resolution may include the following:

(1) the custody, security, expenditure or application of proceeds of the sale of bonds or notes of the Agency (hereinafter “proceeds”), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;

(2) a pledge of revenue from projects of the Agency to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;

(3) a pledge of assets of the Agency, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;

(4) use of gross income from mortgages owned by the Agency and payment on principal of mortgages owned by the Agency;

(5) use of reserves or sinking funds;

(6) use of proceeds from sale of bonds or notes and a pledge of proceeds to secure payment;

(7) limitation of issuance of additional bonds or notes, including terms of issuance and security, and the refunding of outstanding or other bonds or notes;

(8) procedure for amendment or abrogation of a contract with holders of bonds or notes, the amount of bonds or notes, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) vesting in a trustee property, power and duties, which may include the power and duties of a trustee appointed by holders of bonds or notes under this chapter;

(10) limitation or abrogation of the right of holders of bonds or notes to appoint a trustee under this chapter;

(11) defining the nature of default in the obligations of the Agency to the holders of bonds or notes and provided rights and remedies of holders in the event of default, including the right to appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) any other provisions of like or different character which affect the security of holders of bonds or notes.

(d) *Pledge of the Agency.* — A pledge of the Agency is binding from the time it is made. Any funds or property pledged are subject to the lien of a pledge without physical delivery. The

lien of a pledge is binding as against parties having any tort, contract or other claim against the Agency regardless of notice. Neither the resolution nor any other instrument creating a pledge need be recorded.

(e) *Signatures*. — The signature of any officer of the Agency which appears on a bond or note remains valid if that person ceases to hold that office. (Mar. 3, 1979, D.C. Law 2-135, § 403, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1919. Trust indenture.

(a) *Authority*. — The Agency may secure bonds or notes by a trust indenture between the Agency and a corporate trustee which has the power of a trust company within the District.

(b) *Provisions*. — A trust indenture of the Agency may contain provisions for protecting and enforcing the rights and remedies of holders of bonds or notes in accordance with the provisions of the resolution authorizing the sale of bonds or notes.

(c) *Expenses*. — The Agency may treat expenses incurred in carrying out a trust indenture as operating expenses. (Mar. 3, 1979, D.C. Law 2-135, § 404, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1920. Agency's purchase of its own bonds and notes.

Subject to preexisting agreements with the holders of bonds or notes, the Agency may purchase its own bonds or notes which may then be cancelled. The price cannot exceed the following limits: (1) if the bonds or notes are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or (2) if the bonds or notes are not redeemable, the price cannot exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date. (Mar. 3, 1979, D.C. Law 2-135, § 405, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1921. Special or reserve funds.

The Agency may establish special or reserve funds in furtherance of its authority under this chapter. Notwithstanding other provisions of District law and subject to agreements with holders of bonds and notes, the Agency shall manage its own funds, and may invest funds not required for disbursement in a manner the Agency determines prudent. (Mar. 3, 1979, D.C. Law 2-135, § 406, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1922. Nonalteration of rights of bondholders and noteholders.

The District pledges to the holders of any bonds or notes issued under this chapter that the District will not limit or alter rights vested in the Agency to fulfill agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until the bonds and notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The Agency is authorized to include this pledge of the District in any agreement with the holders of bonds or notes. (Mar. 3, 1979, D.C. Law 2-135, § 407, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1923. Credit of the District not pledged.

Obligations issued under the provisions of this chapter do not constitute an obligation of the District, but are payable solely from the revenues or assets of the Agency. Each obligation issued under this chapter must contain on its face a statement that the Agency is not obligated to pay principal or interest except from the revenues or assets pledged and that neither the faith and credit nor the taxing power of the District is pledged to the payment of the principal or interest on an obligation. (Mar. 3, 1979, D.C. Law 2-135, § 408, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1924. Bonds and notes as legal investments.

The bonds and notes of the Agency are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds and notes are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law. (Mar. 3, 1979, D.C. Law 2-135, § 409, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1925. District tax exemption.

(a) Assets and income of the Agency are exempt from District taxation. The Agency may make, at its discretion, payment in lieu of taxation.

(b) Bonds and notes issued by the Agency and the interest thereon are exempt from District taxation except estate, inheritance and gift taxes. (Mar. 3, 1979, D.C. Law 2-135, § 410, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1926. Deposits and monies in trust.

(a) All monies of the Agency, except as otherwise authorized in this chapter, shall be deposited as soon as practicable in one or more separate accounts in financial institutions regulated or insured by a federal or District agency. Monies in these accounts shall be paid out on checks signed by the Executive Director or other authorized officers or employees of the Agency.

(g) Notwithstanding the provisions of this section, the Agency shall have power to contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any monies of the Agency and of any monies held in trust or otherwise for the payment of notes or bonds. Monies held in trust pursuant to a contract with holders of notes or bonds may be secured in the same manner as monies of the Agency. (Mar. 3, 1979, D.C. Law 2-135, § 411, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

Section referred to in section. 45-1908.

*Subchapter V.—Public Accountability***§ 45-1927. Administrative Procedure Act.**

All actions of the Agency shall be conducted in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). (Mar. 3, 1979, D.C. Law 2-135, § 501, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1928. Advisory Board.

The Board of Directors of the Agency shall, within sixty (60) days of its first meeting, appoint an Advisory Board of twenty-five (25) persons which must include individuals with experience in the areas of mortgage banking, real estate, finance, architecture, federal and District housing programs, construction and rehabilitation, consumer affairs, community organization, small business programs and commercial development. The Advisory Board must include a member from each ward selected by the Advisory Neighborhood Commissioners. The Advisory Board shall advise the Agency with respect to the development of its rules and regulations, its plans and programs and any other matters designated by the Board. (Mar. 3, 1979, D.C. Law 2-135, § 502, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1929. Annual report.

The Agency shall, within ninety (90) days of the end of each fiscal year, submit an annual report of its activities for the preceding year to the Mayor, the Council, and the Advisory Board. The report shall set forth a complete operating financial statement of the Agency during the fiscal year it covers, its housing program operations and accomplishments, its plans for the succeeding fiscal year, and its recommendations for needed action on the part of the Mayor or Council, with respect to the purposes of the Agency. (Mar. 3, 1979, D.C. Law 2-135, § 503, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1930. Annual audit.

The Agency shall contract at least once each year with an independent certified public accountant to audit the books and accounts of the Agency. The Agency shall transmit the audit to the Mayor and Council within ten (10) days of receipt. (Mar. 3, 1979, D.C. Law 2-135, § 504, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

*Subchapter VI.—Miscellaneous Provisions***§ 45-1931. Liberal construction.**

The provisions of this chapter are to be liberally construed so as to effectuate those powers which are specifically enumerated. (Mar. 3, 1979, D.C. Law 2-135, § 601, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

§ 45-1932. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or provision of this chapter shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective, and no other section, subsection, subdivision, paragraph, sentence, clause, or provision shall on account thereof be deemed invalid or ineffective. (Mar. 3, 1979, D.C. Law 2-135, § 602, 25 DCR 5008.)

Legislative History of Law 2-135. See note to § 45-1901.

TITLE 46.—SOCIAL SECURITY

| | |
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| Chap. | Sec. |
| 3. Unemployment Compensation | 46-301 |

CHAPTER 3.—UNEMPLOYMENT COMPENSATION

| | |
|--|---|
| Sec. | Sec. |
| 46-301. Definitions. | 46-310. Disqualification for benefits. |
| 46-303. Employer contributions. | 46-313. Administration. |
| 46-306. Deposit in unemployment trust fund — Contents of fund — Balance. | 46-315. District of Columbia Unemployment Compensation Board. |
| 46-307. Amount and duration of benefits. | 46-319. Penalites. |
| 46-309. Eligibility for benefits. | 46-327. [Repealed.] |

§ 46-301. Definitions.

As used in this chapter, unless the context indicates otherwise —

* * * * *

(b) (1) “Employment” means:

(A) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by —

* * * * *

(B) (i) Service performed after December 31, 1971, by an individual in the employ of the District or any of its instrumentalities (or in the employ of the District and one or more States or their instrumentalities) for a hospital or institution of higher education: Provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301-3311) solely by reason of section 3306 (c) (7) of that Act (26 U.S.C. § 3306 (c) (7)) and is not excluded from “employment” under subsection (b) (1) (D);

(ii) Service performed after December 31, 1977, in the employ of the District or any of its instrumentalities, or in any instrumentality of the District and one or more States or political subdivisions: Provided, that such service is excluded from “employment” as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301-3311) by section 3306 (c) (7) (26 U.S.C. § 3306 (c) (7)) of that Act and is not excluded from “employment” under subsection (b) (1) (D) of this section.

* * * * *

(D) For the purposes of subparagraphs (B) and (C) the term “employment” does not apply to service performed after December 31, 1971 —

* * * * *

(v) Prior to January 1, 1978, for a hospital in a prison or other correctional institution of the District by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term “employment” shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and except in the Virgin Islands until and including December 31st of the year in which the Secretary of Labor approves for the first time an unemployment insurance law of the Virgin Islands submitted to him for approval) after December 31, 1971, in the employ of an American employer (other than service which is deemed “employment” under the provisions of subsection (b) (2) of this section or the parallel provisions of another State’s law), if:

* * * * *

(v) As used in this subparagraph the term "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands as provided in subsection (b) (1) (E) of this section.

(F) The term "employment" shall include personal or domestic service in a private home for an employer who paid cash remuneration of \$500 or more in any calendar quarter. "Personal or domestic service" for the purpose of this subparagraph shall include all persons employed by an employer in his capacity as a householder, as distinguished from a person employed by the employer in the pursuit of a trade, occupation, profession, enterprise, or vocation. After December 31, 1977, the term "employment" shall also include personal and domestic service in a local college club or a college fraternity or sorority for an employer who paid cash remuneration of \$500 or more in any calendar quarter in the current or preceding calendar year to individuals employed in such domestic service.

* * * * *

(5) The term "employment" shall not include —

* * * * *

(E) service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(F) service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an Act of Congress;

(G) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code of the United States (26 U.S. Code), if —

(i) the remuneration for such service does not exceed \$50; or

(ii) such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(H) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(I) service performed in the employ of an instrumentality wholly owned by a foreign government —

(i) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(ii) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(J) service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(K) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(L) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(M) service covered by an arrangement between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by such employer's duly approved election are deemed to be performed entirely within such agency's State;

(N) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if he performed service on and in connection with such vessel or aircraft when outside the United States;

(O) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (i) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (ii) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(P) service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters.

(Q) service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. § 288 — 288f-2).

(6) INCLUDED AND EXCLUDED SERVICE. — If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term “pay period” means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual in employment for the person employing him, where any of such service is excepted by subsection (b) (5) (F).

* * * * *

(8)

* * * * *

(C) Repealed. Mar. 3, 1979, D.C. Law 2-129, § 2 (d), 25 DCR 2451.

(c) “Wages” means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the District of Columbia Council, except that such term “wages” shall not include —

* * * * *

(3) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term “previously uncovered services” means services which were not employment as defined in subsection (b) (1) of this section and were not services covered pursuant to subsection (b) (8) of this section at any time during the one-year period ending December 31, 1975, and which were newly covered services as mandated by the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566; 90 Stat. 2667), except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567; 88 Stat. 1850), was paid on the basis of such services.

* * * * *

(e) An individual shall be deemed “unemployed” with respect to any week during which he performs no service and with respect to which no earnings are payable to him or with respect to any week of less than full-time work if eighty per centum of the earnings payable to him with respect to such week are less than his weekly benefit amount plus twenty dollars.

* * * * *

(q) “State” includes, in addition to the States of the United States of America, the District of Columbia (herein referred to as the “District”), Commonwealth of Puerto Rico, and the Virgin Islands.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (a)-(g), 25 DCR 2451.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-129, amended section by amending paragraph (1) of subsection (b) generally, by deleting former subparagraph (E) and redesignating former subparagraphs (F) through (R) as present subparagraphs (E) through (Q) of subsection (b) (5), by rewriting subparagraph (6) of subsection (b) (5), by substituting “(F)” for “(G)” at the end of the last sentence of subsection (b) (6), by repealing subparagraph (C) of subsection (b) (8), by adding paragraph (3) in subsection (c), by inserting “eighty per centum of” near the middle and adding “plus twenty dollars” at the end of subsection (e), and by inserting “Commonwealth of” in subsection (q).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227, July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. Law 2-129 was introduced in Council and assigned Bill No. 2-209, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first, amended first, second amended first, and second readings on April 18, 1978, June 27, 1978, July 11, 1978 and July 25, 1978, respectively. Signed by the Mayor on August 30, 1978, it was assigned Act No. 2-267 and transmitted to both Houses of Congress for its review.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to the introductory language of subsection (b) (1) (E) of this section shall apply with respect to remuneration paid after Dec. 31 of the year in which the Secretary of Labor approves for the first time an unemployment compensation law submitted to him by the Virgin Islands for approval, that the 1979 amendment to subsection (e) of this section shall take effect on Mar. 3, 1979, and that the other 1979 amendments to this section shall take effect on Jan. 1, 1978.

Section referred to in sections. 46-303, 46-307, 46-309.

NOTES TO DECISIONS

Purpose of unemployment compensation law is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of other welfare programs. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

“Directed and controlled” relates to merits of work performed. — For purposes of determining a worker’s place of direction and control pursuant to subsection (b) (2), the phrase “directed and controlled” encompasses more than the setting of work hours and similar personnel policies; it also has relation to the merits of the work performed. Thus where an employee of a California firm under contract to a federal agency based in the District of Columbia was under the control of the firm insofar as administrative matters were concerned but received training, scheduling and guidance from the agency, she received direction and control for her services in the District of Columbia. *Haugness v. District Unemployment Comp. Bd.* (D.C. 1978, 386 A.2d 700).

Vacation with pay is included in the District’s

definition of wages. *Gordon v. District Unemployment Comp. Bd.* (D.C. 1979, 402 A.2d 1251).

But group insurance plans and allowances which meet expenses are excluded. *Gordon v. District Unemployment Comp. Bd.* (D.C. 1979, 402 A.2d 1251).

Voluntary dismissal payments have been considered “earnings” since 1972. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

Voluntary dismissal payments negate “unemployed” status. — An individual is not “unemployed” for a given pay period if he receives voluntary dismissal payments for that period. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

But not self-employment subsequent to termination of other employment. — In light of the removal of the explicit proscription against self-employment formerly found in subsection (e), the public policy preference for compensation through employment rather than welfare compensation and the existence of other statutory

safeguards against excessive or unjustified benefits, subsection (e) was interpreted as erecting no barrier to unemployment compensation for persons engaging in

self-employment subsequent to the termination of their employment by another. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-303. Employer contributions.

* * * * *

(b) Each employer shall pay contributions equal to 2.7 per centum of wages paid by him during the calendar year 1940 and thereafter with respect to employment after December 31, 1939. After December 31, 1978, each employer shall pay contributions at the rate in effect for the current year as provided by subsections (c) (3), (c) (4) (B), and (c) (8) (A) of this section.

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE. —

* * * * *

(2) (A) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers, except as specifically provided by subparagraphs (B), (C) and (D) below. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers. The principal base period employer shall be notified of each payment of benefits chargeable to such employer's account to a claimant at the time of such payment.

(B) After December 31, 1971, benefits paid to an individual for any week during which he is attending a training or retraining course under the provision of section 46-310 (d) (2) shall not be charged against such employer accounts.

(C) After December 31, 1971, extended benefits paid to an exhaustee under the provisions of section 46-307 (g) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(D) Commencing with the first full calendar quarter following the effective date of this Chapter, but no earlier than January 1, 1979, benefits paid to an individual subsequent to a disqualification imposed under the provisions of section 46-310 (a) or (b) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(3) The standard rate of contributions shall be 2.7 per centum, except that after December 31, 1978, each employer newly subject to this chapter shall pay contributions at a rate equal to the average rate on taxable wages of all employers for the preceding calendar year (rounded to the next higher one-tenth of 1 per centum), or 1 per centum, whichever is higher until he has been an employer for a sufficient period to meet the requirement to qualify for a reduced rate as provided in paragraph (4) of this subsection; thereafter, his contribution rate shall be determined in accordance with the provisions of such paragraph (4): Provided, that employers electing to become liable for payments in lieu of contributions shall make such payments pursuant to subsection (h) of this section.

(4) (A) After December 31, 1978, contribution rates of all employers whose accounts could have been charged with benefits paid throughout the thirty-six consecutive calendar-month period ending on the computation date applicable to such year or part thereof shall be determined in accordance with the provisions of subparagraph (B) of this paragraph.

(B) (i) If the amount of the fund referred to in section 46-306 as of September 30 of any year is less than the amount of the fund as of September 30 of the preceding year, and does not equal or exceed one and one-half times the amount of benefits paid during the twelve-consecutive-month period ending on September 30 of the current year, Table I in subsection (c) (8) (A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph. If the amount in such fund as of September 30 of any year

is greater than the amount in the fund as of September 30 of the preceding year but does not equal or exceed one and one-half times the amount of benefits paid during the twelve-consecutive-month period ending September 30 of the current year, Table II in subsection (c) (8) (A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph. If the amount in such fund as of September 30 of any year equals or exceeds one and one-half times the amount of benefits paid in the twelve-consecutive-month period ending September 30 of the current year, Table III in subsection (c) (8) (A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph;

(ii) Notwithstanding the provisions of clause (i) of this subparagraph, if the amount in the fund as of September 30 of any year is equal to or less than 2 per centum of the total payrolls subject to contributions under this chapter for the twelve-consecutive-month period ending on the preceding June 30, Table I in subsection (c) (8) (A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph, except that an additional .9 per centum solvency tax shall be added to each employer's rate, not to exceed 5.4 per centum.

(C) CONTRIBUTION RATES AFTER TERMINATION OF MILITARY SERVICE. — When the Board finds that the continuity of an employer's employment experience has been interrupted solely by reason of one or more of the owners, officers, managers, partners, or majority stockholders of such employer's employing enterprise having served in the armed forces of the United States of America or any of its allies during a time of war, such employer's employment experience shall be deemed to have been continuous throughout the period that such individual or individuals so served in such armed forces, including the period up to the time it again resumes the status of an employer liable for contributions under this chapter, provided it resumes such status within two years from the date of discharge of such individual or individuals or from the date of the termination of such war, whichever date is the earlier. For the purposes of this subparagraph (C), in determining an employer's contribution rate his average annual pay roll shall be the average of his last three annual pay rolls.

* * * * *

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

(A) As of the computation date, the total benefits paid after June 30, 1939, then chargeable or charged to any employer's account, shall be subtracted from the total of all contributions credited to his account with respect to employment since May 31, 1939. The result of this computation shall be known as the employer's reserve and his contribution rate for the ensuing calendar year shall be established under Table I, II, or III of this subparagraph in accordance with the provisions of paragraph (4) (B) of this subsection.

Table I

- (i) 0.1 per centum if such reserve equals or exceeds 6.0 per centum of the employer's average annual payroll;
- (ii) 0.5 per centum if such reserve equals or exceeds 5.5 per centum but is less than 6.0 per centum of the employer's average annual payroll;
- (iii) 1.0 per centum if such reserve equals or exceeds 4.5 per centum but is less than 5.5 per centum of the employer's average annual payroll;
- (iv) 1.5 per centum if such reserve equals or exceeds 4.0 per centum but is less than 4.5 per centum of the employer's average annual payroll;
- (v) 2.0 per centum if such reserve equals or exceeds 3.5 per centum but is less than 4.0 per centum of the employer's average annual payroll;
- (vi) 2.7 per centum if such reserve equals or exceeds 3.0 per centum but is less than 3.5 per centum of the employer's average annual payroll;

- (vii) 3.2 per centum if such reserve exceeds minus 0.5 per centum but is less than 0.0 per centum of the employer's average annual payroll;
- (viii) 3.6 per centum if such reserve exceeds minus 1.0 per centum but is less than or equal to minus 0.5 per centum of the employer's average annual payroll;
- (ix) 4.0 per centum if such reserve exceeds minus 1.5 per centum but is less than or equal to minus 1.0 per centum of the employer's average annual payroll;
- (x) 4.5 per centum if such reserve is equal to or less than minus 1.5 per centum of the employer's average annual payroll.

Table II

- (i) 0.1 per centum if such reserve equals or exceeds 4.5 per centum of the employer's average annual payroll;
- (ii) 0.5 per centum if such reserve equals or exceeds 4.0 per centum but is less than 4.5 per centum of the employer's average annual payroll;
- (iii) 1.0 per centum if such reserve equals or exceeds 3.0 per centum but is less than 4.0 per centum of the employer's average annual payroll;
- (iv) 1.5 per centum if such reserve equals or exceeds 2.5 per centum but is less than 3.0 per centum of the employer's average annual payroll;
- (v) 2.0 per centum if such reserve equals or exceeds 2.0 per centum but is less than 2.5 per centum of the employer's average annual payroll;
- (vi) 2.7 per centum if such reserve equals or exceeds 0.0 per centum but is less than 2.0 per centum of the employer's average annual payroll;
- (vii) 3.2 per centum if such reserve exceeds minus 0.5 per centum but is less than 0.0 per centum of the employer's average annual payroll;
- (viii) 3.6 per centum if such reserve exceeds minus 1.0 per centum but is less than or equal to minus 0.5 per centum of the employer's average annual payroll;
- (ix) 4.0 per centum if such reserve exceeds minus 1.5 per centum but is less than or equal to minus 1.0 per centum of the employer's average annual payroll;
- (x) 4.5 per centum if such reserve is equal to or less than minus 1.5 per centum of the employer's average annual payroll.

Table III

- (i) 0.1 per centum if such reserve equals or exceeds 3.5 per centum of the employer's average annual payroll;
- (ii) 0.5 per centum if such reserve equals or exceeds 3.0 per centum but is less than 3.5 per centum of the employer's average annual payroll;
- (iii) 1.0 per centum if such reserve equals or exceeds 2.0 per centum but is less than 3.0 per centum of the employer's average annual payroll;
- (iv) 1.5 per centum if such reserve equals or exceeds 1.5 per centum but is less than 2.0 per centum of the employer's average annual payroll;
- (v) 2.0 per centum if such reserve equals or exceeds 1.0 per centum but is less than 1.5 per centum of the employer's average annual payroll;
- (vi) 2.7 per centum if such reserve equals or exceeds 0.0 per centum but is less than 1.0 per centum of the employer's average annual payroll;
- (vii) 3.2 per centum if such reserve exceeds minus 0.5 per centum but is less than 0.0 per centum of the employer's average annual payroll;
- (viii) 3.6 per centum if such reserve exceeds minus 1.0 per centum but is less than or equal to minus 0.5 per centum of the employer's average annual payroll;
- (ix) 4.0 per centum if such reserve is equal to or less than minus 1.0 per centum of the employer's average annual payroll.

(B) Except as otherwise provided in this section, whenever through inadvertence or mistake erroneous charges or credits are found to have been made to experience-rating accounts,

the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation or rate assigned prior to the date of discovery but shall be used on the next computation date in calculating future contribution rates.

(C) Any employer, at any time, may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this chapter, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed, or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than thirty days following the mailing of notice of his rate of contribution for such year, and not later than one hundred and twenty days after the commencement of such year. Such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part.

(9) As used in this subsection —

* * * * *

(B) The term "average annual pay roll", except for the purposes of paragraph (4) (C) of this subsection, means the average of the annual pay rolls of any employer for the three consecutive twelve-month periods ending ninety days prior to the computation date: Provided, that for an employer whose account could have been charged with benefit payments throughout at least twelve but less than thirty-six consecutive calendar months ending on the computation date, the term "average annual pay roll" means the total amount of wages for employment paid by him during the twelve-month period ending ninety days prior to the computation date;

* * * * *

(e) From December 31, 1939, to January 1, 1955, wages, for the purpose of this section, shall not include any amount in excess of \$3,000 paid by an employer to any person arising out of his or her employment during any calendar year. From January 1, 1955, to December 31, 1971, wages shall not include any amount in excess of \$3,000 actually paid by an employer to any person during any calendar year. From January 1, 1972, to December 31, 1977, inclusive, wages shall not include any amount in excess of \$4,200. After December 31, 1977, wages shall not include any amount in excess of \$6,000 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. §§ 3301-3311), whichever is greater) actually paid by an employer to any person during any calendar year. After December 31, 1954, the term "employment" for the purpose of this subsection shall include services constituting employment under any employment security law of a State or of the Federal Government. After December 31, 1971, the term "employment" for the purpose of this subsection shall include services constituting employment performed in the employ of a transferor as determined under the provisions of subsection (c) (7).

(f) (1) In the event the District of Columbia should elect to cover employees under this chapter under the provisions of section 46-301 (b) (8) (A), or in the event any of its instrumentalities are required to be covered under this chapter, in lieu of contributions required of employers under this chapter, the District of Columbia shall pay into the fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the District. If benefits paid an individual are based on wages paid by both the District of Columbia and one or more other employers, the amount payable by the District to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the District of Columbia bears to the total amount of the base-period wages paid to the individual by all of his base-period employers.

(2) The amount of payment required under this section shall be ascertained by the Board quarterly and shall be paid from the general funds of the District at such time and in such manner as the Commissioner of the District of Columbia may prescribe except that to the extent that benefits are paid on wages paid by the District from special administrative funds, the payment by the District into the unemployment fund shall be made from such special funds. The District of Columbia shall be liable only for 50 per centum of any extended benefits paid.

(3) After December 31, 1977, the District shall be provided the option of financing the costs of benefits paid to employees of the District by electing to pay contributions under the provisions of subsection (c) of this section or by electing to become liable for payments in lieu of contributions under the same terms and conditions provided for nonprofit organizations in subsection (h) of this section, except as provided in the following sentence. For weeks of unemployment beginning January 1, 1979, and thereafter, the District will be chargeable if it elects to pay contributions, or will be liable if it elects to make payments in lieu of contributions, for the cost of regular benefits plus one hundred per centum of any extended benefits paid that are attributable to service in the employ of the District.

* * * * *

(h) Notwithstanding any other provisions of this section, benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and subsection (i), a nonprofit organization is an organization (or group of organizations) described in section 501 (c) (3) of the Internal Revenue Code of 1954 [26 U.S.C. § 501 (c) (3)] which is exempt from income tax under section 501 (a) of such Code [26 U.S.C. § 501 (a)].

(1) Any nonprofit organization which, pursuant to section 46-301 (b) (1) (C), is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of subsection (c), unless it elects, in accordance with this paragraph to pay to the Board for the District Unemployment Fund an amount equal to the amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

* * * * *

(G) Any nonprofit organization which elects to make payments in lieu of contributions into the District Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in section 46-301 (c) (3) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to section 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).

* * * * *

(k) Notwithstanding any provisions of this chapter, no employer's experience rating account shall be charged with respect to benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 46-301 (c) (3) to the extent that the unemployment insurance fund is reimbursed for such benefits pursuant to section 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).
(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (h)-(q) 25 DCR 2451.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-129, amended section by adding the second sentence in subsection (b), by designating the provisions of subsection (c) (2) as subparagraph (A), substituting the present second sentence for the proviso which formerly appeared at the end of the first sentence and inserting "chargeable to such employer's account" in the last sentence of that subparagraph, and by adding subparagraphs (B), (C) and (D) in subsection (c) (2), by substituting "1978" for "1971", deleting "(not exceeding 2.7 per centum)" preceding "until" and adding the proviso in subsection (c) (3), and by rewriting subparagraph (A), substituting present subparagraph (B) for former subparagraphs (B) and (C),

redesignating former subparagraph (D) as present subparagraph (C) and substituting "(C)" for "(D)" in the last sentence of that subparagraph in subsection (c) (4). The act also rewrote subparagraph (A) of subsection (c) (8), deleted subparagraph (B) of that subsection and redesignated former subparagraphs (C) and (D) as present subparagraphs (B) and (C) of subsection (c) (8), substituted "(C)" for "(D)" near the beginning of subparagraph (B) of subsection (c) (9), and inserted the third sentence and substituted "After December 31, 1977, wages shall not include any amount in excess of \$6,000" for "After December 31, 1971, wages shall not include any amount in excess of \$4,200" at the beginning of the fourth sentence in subsection (e). Finally, the act designated the

paragraphs of subsection (f) as paragraphs (1) and (2) and added paragraph (3) of that subsection, added subparagraph (G) of subsection (h) (1) and added subsection (k).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227, July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to subsection (e) of this section, with respect to extended benefits based on service in the employ of the District, shall take effect on Jan. 1, 1979, that the 1979 amendments to subsections (b) and (c) (3), (c) (4), (c) (8) and (c) (9) (B) of this section shall take effect on Jan. 1, 1979, and that the remaining 1979 amendments to this section shall take effect on Jan. 1, 1978.

Section referred to in sections. 46-306, 46-310.

NOTES TO DECISIONS

Disqualification case remanded because of decision's ultimate effect on employer's contributions. — Appellate court remanded case for redetermination of disqualification under § 46-310 (b), despite the Board's prior failure to develop sufficient evidence of misconduct, because the employer's contribution to the unemployment

compensation fund would be by the claims experience of its employees. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Cited in *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-306. Deposit in unemployment trust fund — Contents of fund — Balance.

(a) All moneys received in the District unemployment fund from sources other than the unemployment trust fund, except as provided in section 46-304 (i) and section 46-301 (b) (5) (D), shall be immediately paid over to the Secretary of the Treasury to the credit of the unemployment trust fund, to be held in trust for the District upon the terms and conditions provided in section 1104 of title 42, U.S. Code.

(b) The fund shall consist of (1) all employer contributions and payments in lieu of contributions collected under this chapter; (2) interest earned upon the money in the fund; (3) any property or securities acquired through the use of money belonging to the fund; (4) all earnings of such property or securities; (5) all money credited to the District account in the Unemployment Trust Fund pursuant to section 1103 of title 42, U.S. Code; and (6) all other money received for the fund from any other source.

(c) In determining the balance in the fund for the purpose of section 46-303 (c) (4) (B), there shall be excluded:

(1) any amount credited to the District's account in the Unemployment Trust Fund pursuant to section 1103 of title 42, U.S. Code which has been appropriated for expenses of administration, whether or not such amount has been withdrawn from the fund;

(2) any amount paid in advance into the fund by an employer under any type of coverage pursuant to which reimbursement of benefits paid is permitted in lieu of contributions required of employers;

(3) any amount paid in advance into the fund by the Federal Government under the provisions of any Federal law that requires or permits the District to pay benefits from the fund and provides for advances by the Federal Government or reimbursement of all or part of such benefits; and

(4) any estimated or other contributions not legally due and payable with respect to the calendar quarter ending September 30 of the year for which the balance in the fund is determined.

(d) In determining the balance in the fund for purposes of section 46-303 (c) (4) (B), there shall be included negative entries corresponding to any amounts owed to the Federal unemployment account as a result of advances to the fund in accordance with title XII of the Social Security Act (42 U.S.C. §§ 1321-1324). (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 6, formerly § 7; renumbered

and amended June 4, 1943, 57 Stat. 112, ch. 117; Mar. 3, 1979, D.C. Law 2-129, § 2 (r), 25 DCR 2451.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-129, amended section by designating the formerly undesignated language as subsection (a) and adding subsections (b), (c) and (d).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to this section shall take effect on Mar. 3, 1979.

Section referred to in section. 46-303.

§ 46-307. Amount and duration of benefits.

* * * * *

(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than \$300 in one quarter in his base period, (2) been paid wages for employment of not less than \$450 in not less than two quarters in such period, and (3) received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages actually received in the quarter in such period in which his wages were the highest. If a claimant satisfies the above except that he received wages over the amount necessary to become eligible for maximum benefits, in the quarter in which his wages were the highest, then the additional wages received in such quarter shall not be considered in determining eligibility. Notwithstanding the provisions of paragraph (3), any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such paragraph, may qualify for benefits, if the difference between the amounts so required to have been received and the total amount of his wages during such period does not exceed \$70, but the amount of his weekly benefit, as computed under subsection (b), shall be reduced by \$1 if such difference does not exceed \$35 or by \$2 if such difference is more than \$35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year shall not be available for benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, performed services for which he received remuneration for personal services, whether or not such services were performed in employment as defined in this chapter, in an amount equal to at least ten times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the District of Columbia Council, by any amount received or applied for with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be prorated by weeks. When an individual's weekly benefit amount is reduced by a pension, the individual's maximum weekly benefit amount shall be deducted from his total amount of benefits determined pursuant to subsection (d) of this section. No reduction shall be made under the preceding three sentences for any amount received under title II of the Social Security Act [42 U.S.C. § 401 et seq.].

* * * * *

(e) Any individual who is unemployed in any week as defined in section 46-301 (E) and who meets the conditions of eligibility for benefits of section 46-309 and is not disqualified under the provisions of section 46-310 shall be paid with respect to such week an amount equal to the individual's weekly benefit amount less any earnings payable to the individual with respect to such week deductible in accordance with the following formula:

Twenty dollars will be added to the weekly benefit amount; from the resulting sum will be subtracted eighty per centum of any earnings payable to the individual for such week. The resulting benefits, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar. In no event shall the amount paid for any week exceed the individual's established weekly benefit amount.

* * * * *

(g) **EXTENDED BENEFITS PROGRAM.** — Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

(1) **DEFINITIONS.** — As used in this subsection, unless the context clearly requires otherwise —

* * * * *

(B) After December 31, 1976, there is a national "on" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(C) After December 31, 1976, there is a national "off" indicator for a week, if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(D) There is a State "on" indicator for the District for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve weeks:

(i) equaled or exceeded 120 per centum of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years; and

(ii) equaled or exceeded 4 percent: Provided, that with respect to benefits for weeks of unemployment beginning after March 31, 1977, the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (I) subparagraph (D) did not contain clause (i) thereof, and (II) the figure "4" contained in clause (ii) thereof were "5": Except, that notwithstanding any such provision of this subsection, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

(E) There is a State "off" indicator for the District for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either clause (i) or (ii) of subparagraph (D) was not satisfied.

* * * * *

(7) Repealed. Mar. 3, 1979, D.C. Law 2-129, § 2 (v), 25 DCR 2451.

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (s)-(v), 25 DCR 2451.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-129, amended section by inserting the second and next-to-last sentences and substituting “three” for “two” in the last sentence in subsection (c), by rewriting subsection (e) and subparagraphs (B), (C), (D) and (E) of subsection (g) (1) and by repealing paragraph (7) of subsection (g).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227, July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act

Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to the second sentence of subsection (c) of this section shall apply to claims filed or pending appeal upon Mar. 3, 1979, that the remaining 1979 amendments to subsection (c) of this section and the 1979 amendment to subsection (e) of this section shall take effect on Mar. 3, 1979, and that the remaining 1979 amendments to this section shall take effect on Jan. 1, 1978.

Section referred to in sections. 46-303, 46-310.

NOTES TO DECISIONS

Cited in *Gordon v. District Unemployment Comp. Bd.* (D.C. 1979, 402 A.2d 1251).

§ 46-309. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Board —

* * * * *

(g) (1) Benefits based on service in employment defined in section 46-301 (b) (1) (B) and (C) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 46-301 (w)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(2) Benefits based on service in employment defined in section 46-301 (b) (1) (B) and (C) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter: Except, that with respect to weeks of unemployment beginning after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Paragraph (1) of this

subsection shall apply with respect to benefits payable for weeks of unemployment beginning before January 1, 1978, based on such services.

(h) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(i) (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of 8 U.S.C. § 1153 or 8 U.S.C. § 1182).

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (w), (x), 25 DCR 2451.)

Effect of Amendment.

1979—Act Mar. 3, 1979, D.C. Law 2-129, amended section by designating the provisions of subsection (g) as paragraph (1) of that subsection, by adding paragraph (2) of subsection (g), and by adding subsections (h) and (i).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-166, Mar. 28, 1978, 24 DCR 9243); sec. 2 of the Third Emergency District of Columbia Unemployment Compensation Act Amendments of 1978 (D.C. Act 2-227, July 10, 1978, 25 DCR 1433); sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30,

1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979—For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendments to this section shall take effect on Jan. 1, 1978.

Section referred to in section. 46-307.

NOTES TO DECISIONS

Subsection (d) is applicable to persons regardless of their geographical location. *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

"Available for work" construed. — In order to be available for work within the meaning of subsection (d) a claimant must be genuinely attached to the labor market and making adequate contacts for work under the circumstances. *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

The principal test for eligibility is genuine attachment to the labor market, a test which necessitates careful examination of the factual circumstances presented by a claimant. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

Claimant is not available for work if he unreasonably restricts his job search. *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

Inability to accept full-time work does not per se render claimant ineligible for benefits, although a refusal to seek full-time employment may in fact negate a claimant's availability for work absent a showing of good cause under subsection (d). *Hawkins v. District Unemployment Comp. Bd.* (D.C. 1978, 390 A.2d 973).

Board's findings on adequacy of work search not supported by substantial evidence. — Where the Board did not consider the type of employment for which an applicant was suited in its evaluation of the adequacy of her work-search efforts and where the record did not reveal the circumstances upon which the Board concluded that her work-search program was inadequate, the Board's findings were not supported by substantial evidence. *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633).

Case remanded for consideration of good cause excuse. — Failure of appeals examiner to expressly consider whether unavailability for work was excusable due to good cause required remand of the case to the Board with directions to conduct further proceedings in order to determine whether the unavailability was excusable under the good cause proviso of subsection (d). *Duncan v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 645).

Claimant otherwise eligible for benefits but unable to fulfill the reporting requirements of subsection (d) because she had moved to Belgium was entitled to have the Board consider whether she had shown good cause to excuse her failure to report, under the proviso of

subsection (d). *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

§ 46-310. Disqualification for benefits.

(a) An individual who left his most recent work voluntarily without good cause connected with the work, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week for which he first files for benefits and with respect to not less than six nor more than twelve consecutive weeks of unemployment which immediately follow such week. The length of the disqualification shall be determined by the Board under regulations prescribed by it, according to the seriousness of the case. In the event such leaving occurs when the individual has an unexpired benefit year, the disqualification shall commence with the week for which he reopens his claim. In addition, such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

(b) An individual who has been discharged for misconduct occurring in the course of his most recent work proved to the satisfaction of the Board shall not be eligible for benefits with respect to the week for which he first files for benefits and with respect to not less than six nor more than twelve consecutive weeks of unemployment which immediately follow such week. The length of the disqualification shall be determined by the Board under regulations prescribed by it, according to the seriousness of the case. In the event such discharge occurs when the individual has an unexpired benefit year, the disqualification shall commence with the week for which he reopens his claim. In addition, such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

* * * * *

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Board that such individual is unemployed in such week as a direct result of a labor dispute, other than a lockout, still in active progress in the establishment where he is or was last employed: Provided, that this subsection shall not apply if it is shown to the satisfaction of the Board that —

* * * * *

(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this chapter, shall be determined under the same standards and procedures as for any other claimant under this chapter. There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue with respect to the reason for separation from employment.

(i) Notwithstanding the provisions of section 46-307, all benefits payable to an individual subsequent to any disqualification period under the provisions of subsection (a) or (b) of this section, with respect to an initial claim which becomes effective during a calendar year beginning after December 31, 1979, shall be reduced by an amount equal to ten per centum (10%) of the amount to which the individual would otherwise be entitled, rounded to the next lower multiple of one dollar: Provided, (1) that the total amount of benefits paid during the twelve month period ending June 30 of the preceding year exceeds the total amount of contributions and interest paid into the fund during the same period, as determined by the Board by September 30 of 1979 and of each succeeding year; and (2) that the Board so certified to the Council of the District of Columbia and that during the forty-five day period (excluding recesses of the Council and holidays) after such certification is submitted to the Council by the Board, the Council does not adopt a resolution disapproving the lower payments authorized by this subsection. Solely for the purpose of determining whether the conditions described in paragraph (1) of this subsection exist, "contributions" shall not include payments in lieu of contributions pursuant to section

46-303 (f) or (h), and “benefits” shall not include payments chargeable to the accounts of employers who have elected to make payments in lieu of contributions pursuant to section 46-303 (f) or (h).

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (y), (z), (aa)-(cc), 25 DCR 2451.)

Effect of Amendment.

1979—Act Mar. 3, 1979, D.C. Law 2-129 amended section by rewriting the first sentence, inserting the second and third sentences, and substituting “his” for “the” in the last sentence of subsection (a), by rewriting the first sentence and inserting the second and third sentences of subsection (b), by inserting “other than a lockout” in the introductory paragraph of subsection (f), by adding the last sentence in subsection (h) and by adding subsection (i).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory

Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendments to subsections (a), (b), (f) and (h) of this section shall take effect on Mar. 3, 1979 and that the addition of subsection (i) of this section shall take effect on Jan. 1, 1978.

Section referred to in sections. 46-303, 46-307.

NOTES TO DECISIONS

“Misconduct” construed. — “Misconduct” must be an act of wanton or willful disregard of the employer’s interest, a deliberate violation of the employer’s rules, a disregard of standards of behavior which the employer has the right to expect of his employee or negligence in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to the employer. Implied in all these standards, however, is a requirement that the employee be on notice that should he proceed he will damage some legitimate interest of the employer for which he could be discharged. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Employer has burden of proving misconduct within the meaning of subsection (b). *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

But unnecessary to demonstrate discharge procedurally proper. — Under subsection (b) an employer need not demonstrate that the discharge for misconduct was procedurally proper. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Board and employer must concur on reasons for discharge. — Finding of misconduct by Board under subsection (b) must be based fundamentally on the reasons specified by the employer for the discharge. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Employer’s concept of misconduct may not comport with statute. — Employee discharged for misconduct based on employer’s concept of that term is not necessarily guilty of misconduct within the meaning of this section. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392); *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Basis for discharge must be reasonable. — In order to disqualify a claimant from benefits for misconduct, the basis for discharge must be reasonable, considered not

with reference to the business interest of the employer but with reference to the purpose of statutory insurance, which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of relief or other welfare programs. *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Participation in writing of memoranda proscribed by employer was misconduct for which an employee was properly dismissed. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

Throwing flashlight at customer’s glass door misconduct. — Meter reader’s action in throwing his flashlight at a customer’s glass storm door at eye level while the customer was standing behind it was not justified by the customer’s slur and constituted misconduct. *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

Case remanded because of decision’s ultimate effect on employer’s contributions to fund. — Appellate court remanded case for redetermination of disqualification under subsection (b), despite the Board’s prior failure to develop sufficient evidence of misconduct, because the employer’s contribution to the unemployment compensation fund would be affected by the claims experience of its employees. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Evidence insufficient that claimant discharged for abandoning job. — *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Evidence insufficient to justify employee’s conduct. — *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Cited in *Duncan v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 645); *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036); *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

§ 46-311. Determination of claims.

NOTES TO DECISIONS

Persons qualified to receive welfare benefits entitled to due process. — Welfare benefits are a matter of statutory entitlement, and persons qualified to receive such benefits are entitled to due process. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Hearings under this section must conform with Administrative Procedure Act (§ 1-1501 et seq.) requirements. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Claimant not entitled to see evaluations not relevant to discharge. — Examiner's refusal to allow claimant to see previous supervisors' evaluations did not violate his right to a fair hearing where the claimant had not been discharged for poor job performance and he was given access to all the relevant material in his personnel file. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Parties to hearing are not bound by rules of evidence. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Sequestering of witnesses is matter resting within Board's sound discretion. *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

Board without authority to extend time limit. — Board had no authority under this section to extend ten day time limit as to applicant who had appealed three days late from a determination that he had received benefits to which he was not entitled, even though he explained the late filing as due to his wife's death. *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036).

But whether employer's appeal tolls period remains undecided. — *Gaskins v. District Unemployment Comp. Bd.* (D.C. 1974, 315 A.2d 567) (which held that the Board could not extend time limit for taking appeal), does not resolve the question whether an employer's timely appeal tolls the ten day period within which the employee must note his or her own appeal under subsection (b). *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036).

Cited in *Kober v. District Unemployment Comp. Bd.* (D.C. 1978, 384 A.2d 633); *Williams v. District Unemployment Comp. Bd.* (D.C. 1978, 383 A.2d 345).

§ 46-312. Court review.

NOTES TO DECISIONS

Review in Court of Appeals is limited to a determination of whether the Board's findings of fact are supported by substantial evidence in the record and whether the Board correctly applied the relevant law. *Dyer v. District of Columbia Unemployment Comp. Bd.* (D.C. 1978, 392 A.2d 1).

Cited in *Worrell v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1036); *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 46-313. Administration.

(a) The Board is hereby authorized and directed to administer the provisions of this chapter. The Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures as may be necessary to administer this chapter, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The District of Columbia Council may, in its discretion, require bond from any employees of the Board engaged in carrying out the provisions of this chapter.

(b) Notwithstanding any other provision of law, the Board is authorized to prescribe all reasonable regulations which may be necessary to implement this chapter: Provided, however, that no rule or regulation shall take effect until the end of the thirty calendar day period (excluding recesses of the Council) beginning on the day such rules and regulations are transmitted by the Chairperson of the Board to the Chairperson of the Council, and then, only if during such thirty calendar day period, the Council does not adopt a resolution disapproving such rules and regulations.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (dd), 25 DCR 2451; Mar. 3, 1979, D.C. Law 2-139, § 3205 (a), 25 DCR 5740.)

Effect of Amendments.

1979—Act Mar. 3, 1979, D.C. Law 2-129, amended section by rewriting subsection (b). Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “Subject to the Civil Service Act” at the beginning of the second sentence and by deleting the former third sentence in subsection (a).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979—For temporary amendment of subsection (b), see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Legislative History of Law 2-139. See note to § 1-331.1.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to subsection (b) of this section shall take effect on Mar. 3, 1979.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Effect of delegation of administrative authority to Board. — By delegating administrative authority to the Board, Congress has constituted that body as the primary interpreters of this chapter, and as a consequence courts should give deference to the construction placed on this

chapter by the Board. *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010).

Cited in *Bethel v. Jefferson* (1978, 589 F.2d 631, 191 U.S. App. D.C. 108); *Jones v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 392).

§ 46-315. District of Columbia Unemployment Compensation Board.

(a) There is hereby established the District of Columbia Unemployment Compensation Board, to be composed of the Mayor or his designee as member ex-officio, two representatives of employers and two representatives of employees to be appointed by the Mayor. Each such representative shall be a resident of the District of Columbia. Members of the Unemployment Compensation Board shall be representative of the population of the District of Columbia. Each representative shall hold office for a term of three years: Except, that in making initial appointments, the Mayor shall appoint one employee and one employer representative to serve two year terms. Any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The Mayor of the District of Columbia shall be the Chairman of the Board. The District of Columbia Unemployment Compensation Board shall meet at least once in each three month period. A majority of the representatives shall constitute a quorum: Provided, that one employee representative and one employer representative are present.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (ee), 25 DCR 2451.)

Effect of Amendment.

1979—Act Mar. 3, 1979, D.C. Law 2-129, amended section by rewriting subsection (a).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979—For temporary amendment of subsection (a), see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to subsection (a) of this section shall take effect on Mar. 3, 1979.

§ 46-316. Reciprocal arrangements.

NOTES TO DECISIONS

Court of Appeals cannot compel reciprocal arrangements with foreign governments. — Although the Board is charged with the power to seek agreement and possibly to agree with a foreign power respecting compensation benefits, the Court of Appeals is not empowered to compel such a result. *Lechter-Siegel v. District Unemployment Comp. Bd.* (D.C. 1978, 395 A.2d 57).

Cited in *Cumming v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 1010); *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

§ 46-319. Penalties.

* * * * *

(d) Any person who has received any sum as benefits under this chapter to which he is not entitled shall, in the discretion of the Director, be liable to repay such sum to the Board, to be redeposited in the fund; be liable to have such sum deducted from any future benefits payable to him under this chapter; or may have such sum waived in the discretion of the Director: Provided, however, that no such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience; or in the discretion of the Board such recoupment has been waived. In any case in which, under this subsection, a claimant is liable to repay to the Board any sum, such sum may be collected without interest, by civil action in the name of the Board. The disbursing officer and certifying officer of the Board shall not be held liable for any amounts certified or paid by them, in good faith, prior to the effective date of this chapter, or subsequent thereto, to any person where the refund, recoupment, adjustment, or recovery of such amount is waived under this subsection or where such refund, recoupment, adjustment, or recovery under this subsection is not completed prior to the death of the person against whom such refund, recoupment, adjustment, or recovery has been authorized.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-129, § 2 (ff), 25 DCR 2451.)

Effect of Amendment.
1979—Act Mar. 3, 1979, D.C. Law 2-129, amended section by deleting the former first sentence and substituting all the present language preceding the proviso in the first sentence of subsection (d) for all the language formerly preceding the proviso.

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1978 (D.C. Act 2-266, Aug. 30, 1978, 25 DCR 2484); and sec. 2 of the Second Emergency District of Columbia Unemployment Compensation Act Compulsory

Amendments of 1978 (D.C. Act 2-303, Nov. 27, 1978, 25 DCR 5480).

1979—For temporary amendment of subsection (d), see sec. 2 of the First Emergency District of Columbia Unemployment Compensation Act Compulsory Amendments of 1979 (D.C. Act 3-8, Feb. 21, 1979, 25 DCR 8111).

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 amendment to subsection (d) of this section shall take effect on Mar. 3, 1979.

NOTES TO DECISIONS

Violation occurs at moment false representation or omission of material fact is made with the intent to obtain or increase any benefit, and there is no indication whatsoever that actual receipt of unemployment compensation funds is required nor that the party to whom the misrepresentation is made must rely on it to his or the Board's detriment. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

Knowledge requirement of subsection (e) is subjective, relating to the particular individual charged with a fraud rather than to a hypothetical reasonable person. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

But actual knowledge not required. — The knowledge required for fraud under subsection (e) does not necessarily mean actual knowledge of falsity, for the

scienter element is satisfied if a representation is recklessly and positively made without knowledge of its truth. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Significance of obviousness of misrepresentation. — The fact that a misrepresentation was one that a man of ordinary care and intelligence in the maker's situation would have recognized as false is not enough to impose liability for a knowing misrepresentation under subsection (e), but it is evidence from which lack of honest belief may be inferred. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Claimant's intellectual capacity is matter to be taken into account in subsection (e) cases in determining credibility if the claimant testifies that he believed his representation to be true. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Particularized findings required for subsection (e) disqualification. — Absent particularized findings of fraud with reference to an individual claimant, a denial of unemployment benefits under subsection (e) would be arbitrary, capricious and an abuse of discretion. *Jacobs v. District Unemployment Comp. Bd.* (D.C. 1978, 382 A.2d 282).

Section is identical with attempted false pretenses proscribed by §§ 22-103 and 22-1301. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

Conviction for false pretenses under § 22-1301 was proper since the elements of a misdemeanor under this section are not those necessary to establish false pretenses under § 22-1301 and Congress did not intend that this section provide the exclusive criminal sanction for unemployment compensation fraud. *Lewis v. United States* (D.C. 1978, 389 A.2d 306).

§ 46-327. Repealed. Mar. 3, 1979, D.C. Law 2-129, § 2 (gg), 25 DCR 2451.

Legislative History of Law 2-129. See note to § 46-301.

Effective date. Section 4 of Act Mar. 3, 1979, D.C. Law 2-129, provided that the 1979 repeal of this section shall take effect on Jan. 1, 1978.

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Cross reference. For home purchase assistance fund, see § 45-1801 et seq.

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CHAPTER 1.—GENERAL PROVISIONS

| Sec. | Sec. |
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| 47-113a. Appointment of deputy disbursing officer and assistant disbursing officers. | 47-120-2. Independent annual audit of financial operations of District government — Reports. |

§ 47-101. Fiscal year for District of Columbia — Commencement.

Temporary Commission on Financial Oversight of the District of Columbia. Title I of act June 5, 1978, Pub. L. 95-288, provided:

“For salaries and expenses necessary to carry out the provisions of the Act creating the Temporary Commission on Financial Oversight of the District of Columbia (Public Law 94-399), \$3,000,000, which shall be available until expended: *Provided*, That the Temporary Commission on Financial Oversight of the District of Columbia shall have the power to appoint, fix the compensation of, and remove an Executive Director and additional staff members without regard to chapter 51, subchapters III and VI of chapter 53, and chapter 75 of title 5, United States Code, and those provisions of such title relating to the appointment in the competitive service. The Executive Director may be paid compensation at a rate not to exceed the rate prescribed for level IV of the Federal Executive Salary Schedule.”

Act Sept. 26, 1978, Pub. L. 95-386, provided:

“That sections 2 (c) and 3 (c) of the Act entitled ‘An Act to provide for an independent audit of the financial condition of the government of the District of Columbia’,

approved September 4, 1976 (Public Law 94-399, 90 Stat. 1205), are each amended by striking out ‘fixed price’.

“SEC. 2. Section 2 of such Act is amended by adding at the end thereof the following new subsections:

“(h) The Commission may select the government of the District of Columbia as a qualified person under subsection (a), and the chairman of the Commission may enter into contracts with the government of the District of Columbia under subsection (c).

“(i)(1) The Commission is entitled, through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the Commission under this Act.

“(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract.

“(j) Payments made by the Commission to the government of the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for matching purposes under any federally funded grant program provided that the grant is for a purpose similar to any purpose specified in section 2 (a) of this Act.

“SEC. 3. Sections 3 and 4 of such Act are amended by striking out ‘1979’ each place it appears therein and inserting in lieu thereof ‘1982.’”

Act June 21, 1979, Pub. L. 96-27, 93 Stat. 75, provided:

“That section 5 (a) of the Act entitled ‘An Act to provide for an independent audit of the financial condition of the government of the District of Columbia’, approved September 4, 1976, is amended by inserting immediately before the last sentence thereof the following: ‘In addition to the amount authorized by the preceding sentence and for the purposes set forth therein, there are authorized to be appropriated, for the fiscal year ending September 30, 1979, the sum of \$9,000,000, and for the fiscal year ending September 30, 1980, the sum of \$13,000,000, one-half of which sums shall be from funds in the Treasury not

otherwise appropriated and one-half from funds in the Treasury to the credit of the District of Columbia.’

“SEC. 2. (a) The first section of the Act entitled ‘An Act to provide for an independent audit of the financial condition of the government of the District of Columbia’, approved September 4, 1976 (D.C. Code, sec. 47-101, note), is amended by inserting ‘(a)’ before ‘there is hereby.’”

“(b) Subsections (h), (i), and (j) of section 2 of such Act are amended by striking out ‘Commission’ each place it appears therein and inserting in lieu thereof ‘commission’.”

Appropriation. Title I of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made an appropriation for salaries and expenses necessary to carry out the provisions of the Act creating the Temporary Commission on Financial Oversight of the District of Columbia (Pub. L. 94-399). Title II of Pub. L. 96-93 made an appropriation for governmental direction and support: Provided, that \$500,000 of the appropriation shall be for the District of Columbia’s contribution toward the expenses of the Temporary Commission on Financial Oversight of the District of Columbia.

§ 47-105. “Antideficiency Act” applicable to the District of Columbia.

Section referred to in section. 9-605.

§ 47-113a. Appointment of deputy disbursing officer and assistant disbursing officers.

The Commissioner of the District of Columbia shall appoint a deputy disbursing officer of the District of Columbia and such assistant disbursing officers of the District of Columbia as he may, in his discretion and subject to available appropriations, consider necessary, such deputy disbursing officer and assistant disbursing officers to be subordinated to the disbursing officer, District of Columbia. (July 30, 1951, 65 Stat. 127, ch. 250, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205 (q), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “at compensation to be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” following “necessary.”

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

§ 47-120. Auditor — Appointment, tenure, and compensation — Duties — Accessibility of records — Reports.

Section referred to in section. 1-334.6.

§ 47-120-1. Annual audit of accounts and operations of District government by General Accounting Office — Accessibility of records — Reports — Compliance with audit recommendations.

Section referred to in section. 1-1822.

§ 47-120-2. Independent annual audit of financial operations of District government — Reports.

(a) For the fiscal year beginning October 1, 1982, and each fiscal year thereafter, the government of the District of Columbia shall conduct, out of funds of the government of the District of Columbia, an audit of the financial operations of such government. Each such audit

shall be conducted by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles.

(b) For the purpose of conducting an audit for each such fiscal year as required by subsection (a) of this section, the Mayor of the District of Columbia shall, on or after January 2, 1982, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1, 1982, and the next following three fiscal years. Thereafter, each individual elected as Mayor in a general election held for Mayor of the District of Columbia shall on or after January 2 next following his or her election to, and the assuming of the Office of Mayor, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1 of the calendar year in which such Mayor takes office, and the next following three fiscal years. The person previously selected for a four-year period shall not succeed himself or herself. If the Council fails to act on any such selection within a thirty-day period following the date on which it receives from the Mayor the name of such person so selected, the Mayor shall be authorized to enter into a contract with that person for the conduct of such audits. If any person so selected by the Mayor to conduct any such audits for such fiscal years is rejected by the Council, the Mayor shall submit to the Council the name of another qualified person selected by the Mayor to conduct such audits. In the event that the Council rejects the second person so selected by the Mayor, the Mayor shall, within thirty days following that rejection, notify the chairman of the Committee on Appropriations of the Senate and the chairman of the Committee on Appropriations of the House of Representatives, in writing, of that fact. Within fifteen days following the receipt of that notice, such chairmen shall jointly select a person to conduct such audits and shall inform the Mayor, in writing, of the name of the person so selected. Within ten days following the receipt by the Mayor of such name, the Mayor shall enter into a contract with such person pursuant to which that person shall conduct such audits for such fiscal years as herein provided.

(c) The Mayor shall submit a copy of the audit report with respect to each such audit so conducted to the Congress, the President of the United States, the Council of the District of Columbia, and the Comptroller General. (Sept. 4, 1976, Pub. L. 94-399, § 4, 90 Stat. 1208; Sept. 26, 1978, Pub. L. 95-386, § 3, 92 Stat. 750.)

Effect of Amendment.

1978 — Act Sept. 26, 1978, Pub. L. 95-386, 92 Stat. 750
amended section by changing “1979” to “1982”
throughout section.

CHAPTER 2A.—BUDGET AND FINANCIAL MANAGEMENT—BORROWING— DEPOSIT OF FUNDS

Subchapter I.—Budget and Financial Management

§ 47-221. Submission of annual budget.

Section referred to in sections. 1-1811, 1-1822, 47-3107.

§ 47-224. Adoption of budget by Council — Enactment of appropriations by Congress.

New implementing act. Pursuant to this section the “District of Columbia Appropriation Act, 1980” (Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713) was enacted.

Section referred to in sections. 1-146, 1-182, 1-1116, 1-1822.

Subchapter II. — Borrowing

§ 47-241. Authority to issue and redeem general obligation bonds for capital projects.

Appropriation. Title II of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, made an appropriation for reimbursement to the United States of funds loaned in compliance with section 723 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub. L. 93-198), as amended.

CHAPTER 3.—COLLECTION AND DISBURSEMENT OF TAXES

Subchapter I. — General Provisions

Sec.
47-306. Certificate of taxes and assessments due — Fee.
47-306.1. Authority of Mayor to adjust rates for issuance of certificates.

Sec.
47-342. Right of District to sue in States — Authority of Mayor to secure services.
47-343. Definitions.

Subchapter III. — Reciprocal Recovery of Taxes

47-341. Right of States to sue in District — Certificate of secretary of state conclusive proof of authority.

Subchapter I.—General Provisions

§ 47-306. Certificate of taxes and assessments due — Fee.

The collector of taxes shall furnish whenever called upon, a certified statement, over his hand and official seal, of all taxes and assessments, general and special, that may be due at the time of making said certificate; and said certificate when furnished shall be a bar to the collection and recovery from any subsequent purchaser of any tax or assessment omitted from and which may be a lien upon the real estate mentioned in said certificate, and said lien shall be discharged as to such subsequent purchaser, but shall not affect the liability of the person who owned the property at the time such tax was assessed to pay the same, mentioned in said certificate. The charge for each certificate of taxes so issued shall be six dollars. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 3, 1925, 43 Stat. 1222, ch. 477; June 25, 1938, 52 Stat. 1202, ch. 702, § 11; Mar. 16, 1978, D.C. Law 2-57, § 2, 24 DCR 5426.)

Effect of Amendment.
1978 — Act Mar. 16, 1978, D.C. Law 2-57, amended section by deleting the words “one dollar” in the second sentence and inserting in lieu thereof the words “six dollars.”
Legislative History of Law 2-57. Law 2-57 was introduced in Council and assigned Bill No. 2-201, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15, 1977, it was assigned Act No. 2-122 and transmitted to both Houses of Congress for its review.

§ 47-306.1. Authority of Mayor to adjust rates for issuance of certificates.

The Mayor of the District of Columbia is hereby authorized from time to time to adjust the rates to be charged for issuing certificates of real estate taxes and assessments due and for duplicating District of Columbia tax returns. Notice of changes in such rates shall be published in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.) and, in addition, shall be filed with the Council of the District of Columbia at least thirty (30) days prior to their effective date. (Mar. 16, 1978, D.C. Law 2-57, § 5, 24 DCR 5426.)

Legislative History of Law 2-57. See note to § 47-306.

Subchapter II. — Payments for Information Leading to Revenue Recovery

§ 47-331. Definitions.

Appropriation. Section 217 of Act Oct. 30, 1979, Pub. L. 96-93, 93 Stat. 713, appropriated from the applicable funds of the District of Columbia such sums as may be necessary

for making payments authorized by the District of Columbia Revenue Recovery Act of 1977.

Subchapter III.—Reciprocal Recovery of Taxes

§ 47-341. Right of States to sue in District — Certificate of secretary of state conclusive proof of authority.

(a) Any State, acting through its lawfully authorized officials, shall have the right to sue in the Superior Court of the District of Columbia to recover any tax lawfully due and owing to it in any case in which such reciprocal right is accorded to the District of Columbia by such State, whether such right is granted by statutory authority or as a matter of comity.

(b) The certificate of the secretary of state, or of any other authorized official, of such State, or any subdivision thereof, to the effect that the official instituting a suit authorized under subsection (a) for collection of taxes in the Superior Court of the District of Columbia has the authority to institute such suit and collect such taxes shall be conclusive proof of such authority. (Sept. 27, 1978, Pub. L. 95-387, § 2, 92 Stat. 751.)

Short title. The first section of act Sept. 27, 1978, Pub. L. 95-387, 92 Stat. 751, provided "That this act may be cited as the 'District of Columbia Reciprocal Tax Collection Act.' "

Section referred to in section. 47-343.

§ 47-342. Right of District to sue in States — Authority of Mayor to secure services.

(a) In any State, or any subdivision thereof, in which the District of Columbia is authorized under the laws of such State to bring suit for the purpose of recovering taxes lawfully due and owing the District of Columbia, the Corporation Counsel is authorized to bring such suit in the name of the District of Columbia in the courts of such State, or any subdivision thereof.

(b) In connection with any such suit, the Mayor of the District of Columbia is authorized to secure professional and other services at such rates as may be usual and customary for such services in the jurisdiction involved. (Sept. 27, 1978, Pub. L. 95-387, § 3, 92 Stat. 751.)

Compiler's change. The word "counsel" in the third line of this section was spelled "council" in the original act.

Section referred to in section. 47-343.

§ 47-343. Definitions.

For purposes of this subchapter:

(1) The term "taxes" means—

(A) any tax assessment lawfully made, whether based upon a return or any other disclosure of the taxpayer or upon the information and belief of the taxing authority involved;

(B) any penalty lawfully imposed pursuant to any law, ordinance, or regulation which imposes a tax; or

(C) any interest charge lawfully added to the tax liability which constitutes the subject of any suit brought under section 47-341 or 47-342.

(2) The term "State" means any of the several States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. (Sept. 27, 1978, Pub. L. 95-387, § 4, 92 Stat. 751.)

CHAPTER 6A.—REAL PROPERTY TAX

Subchapter I.—General Provisions

Subpart F.—Tax Deferral

- Sec.
47-622. Definitions.
47-622.1. Additional definitions.
- Subchapter II.—Authority and Procedure to Establish
Real Property Tax Rates

- Sec.
47-655. Tax deferral — Homeowner whose adjusted gross
income does not exceed \$20,000.
47-656. Same; homeowner whose adjusted gross income
exceeds \$20,000.

Subpart A.—Real Property Tax Rate

Subpart H.—Residential Property Tax Relief

- 47-631. Tax on real property.
47-632. Council to establish tax rate — Public hearings.
47-632a, 47-632b. [Repealed.]
47-632.1. Classification of real property.
47-632.2. Rules and regulations.
47-633. Mayor to recommend tax rate to Council.

- 47-659. Definitions.
47-659.1. Single-family residential and cooperative
property tax exemption.
47-659.2. Report to the Council of the District of Columbia
on assessment changes for the
highest-assessed properties.
47-659.3. Mayor to gather and report information relating
to single-family residential and residential
cooperative properties.
47-659.4. Council of the District of Columbia to review
single-family residential and cooperative
property tax exemptions annually.
47-659.5. Authorization to establish regulations.
47-659.6. Effective date.
47-659.7. Severability.

Subpart B.—Assessment and Administration

Subchapter III. Miscellaneous

- 47-642. Separate valuation of land and improvements —
Appointment of assessors.
47-645. Annual notice or statement of assessment —
Contents.
47-646. Board of Equalization and Review — Meetings —
Appeals — Assessment revisions.
47-649.1. [Repealed.]

- 47-662. Regulations to administer residential property tax
relief.

Subpart C.—Homeowner Exemption

- 47-650. [Repealed.]

Subpart D.—Tax Incentives

- 47-651. [Repealed.]

Subchapter I.—General Provisions

§ 47-621. Declaration of purpose.

NOTES TO DECISIONS

Broad powers placed with Mayor and Council. — Council with this chapter. *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).
Congress placed broad powers of assessment, notification, rate establishment and collection with the Mayor and the

§ 47-622. Definitions.

For the purposes of this chapter—

* * * * *

- (5) The terms “owner” and “taxpayer” shall include one or more persons whose leasehold interest or interests in a leasehold condominium, as that term is defined in section 5-1202 (r), extend for the entire balance of the unexpired term or terms.
- (6) The term “regulation”, unless specifically identified as a regulation of the Commissioner, means a regulation of the Council enacted under section 406 of the Reorganization Plan Numbered 3 of 1967, and after January 2, 1975, such term means an act of the Council of the District of Columbia enacted under section 412 [D.C. Code § 1-146] (and related sections) of the District of Columbia Self-Government and Governmental Reorganization Act.
- (7) The term “tax year” means—
(A) with respect to a real property tax rate proposed by the Mayor or established by the Council after January 1 but before June 30 of any calendar year, the next following fiscal year; and

(B) with respect to a real property tax rate proposed by the Mayor or established by the Council after June 30 in any calendar year, the fiscal year during which the rate was proposed or established.

(As amended Dec. 18, 1979, D.C. Law 3-40, § 4, 26 DCR 1950.)

Effect of Amendment.

1979 — Act Dec. 18, 1979, D.C. Law 3-40, amended section by redesignating former paragraphs (5) and (6) as

present paragraphs (6) and (7) and by inserting present paragraph (5).

Legislative History of Law 3-40. See note to § 47-631.

§ 47-622.1. Additional definitions.

For the purposes of this chapter:

(a) The term “condominium” means the ownership of a single dwelling unit in a horizontal property regime.

(b) The term “cooperative housing association” means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property in the District of Columbia, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement.

(c) The term “dwelling unit” means any room or group of rooms forming a single unit which is used or intended to be used for living, sleeping and the preparation and eating of meals and which is located within a building which is wholly or partially used or intended to be used for living and sleeping by human occupants.

(d) The term “horizontal property regime” shall have the meaning given that term by section 5-903.

(e) The term “non-transient” means occupancy of a dwelling unit or units by any person(s) for a period of more than five (5) consecutive days during any one stay in such unit(s).

(f) The term “single family residential property” means real property improved by a dwelling unit which is used exclusively for non-transient residential purposes and which contains not more than one (1) dwelling unit whether as a row, detached or semi-detached structure, or as a single condominium unit within a horizontal property regime.

(Mar. 3, 1979, D.C. Law 2-130, § 2, 25 DCR 2517.)

Definitions applicable. The definitions in this section apply to terms appearing in §§ 45-1698, 47-632, 47-632a, 47-633, 47-646, 47-649.1, 47-659, 47-659.1, 47-659.2, and 47-1567g.

Legislative History of Law 2-130. Law 2-130 was introduced in Council and assigned Bill No. 2-318, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 27, 1978 and July 25, 1978, respectively. Signed by the Mayor on August 30, 1978, it was assigned Act No. 2-268 and transmitted to both Houses of Congress for its review.

*Subchapter II.—Authority and Procedure to Establish
Real Property Tax Rates*

Subpart A.—Real Property Tax Rate

§ 47-631. Tax on real property.

Notwithstanding the provisions of section 47-501, there is hereby levied for each fiscal year a tax on the real property in the District of Columbia at a rate or rates determined according to the provisions of this chapter. Unless otherwise provided by law, all revenues received from such tax shall be deposited, from time to time, in the Treasury of the United States, to the credit of the District of Columbia. (Sept. 3, 1974, Pub. L. 83-407, title IV, § 411, 88 Stat. 1052; June 15, 1976, D.C. Law 1-70, title III, § 305, 23 DCR 540; Mar. 3, 1979, D.C. Law 2-138, § 5, 25 DCR 5147; Dec. 18, 1979, D.C. Law 3-40, § 3, 26 DCR 1950.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-138, amended section by adding a proviso at the end of the first sentence. Act Dec. 18, 1979, D.C. Law 3-40, amended section by reenacting the first sentence without change.

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 3 of the Real Property Tax Rates for Tax Year 1980 Emergency Act of 1979 (D.C. Act 3-74, Aug. 2, 1979, 26 DCR 638); and sec. 3 of the Real Property Tax Rates for Tax Year 1980 Second Emergency Act of 1979 (D.C. Act 3-111, Oct. 26, 1979, 26 DCR 1944).

Legislative History of Law 2-138. Law 2-138 was introduced in Council and assigned Bill No. 2-369, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 3, 1978 and October 17, 1978, respectively. Signed by the Mayor on November 9, 1978, it was assigned Act No. 2-299 and transmitted to both Houses of Congress for its review.

Legislative History of Law 3-40. Law 3-40 was introduced in Council and assigned Bill No. 3-176, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 25, 1979 and October 9, 1979, respectively. Signed by the Mayor on October 26, 1979, it was assigned Act No. 3-112 and transmitted to both Houses of Congress for its review.

§ 47-632. Council to establish tax rate — Public hearings.

The Council, after public hearing, shall by act establish each year, within twenty days after the receipt of the Mayor's recommendation under section 47-633, rates of taxation by class as set forth in section 47-632.1 (b) shall be applied, during the tax year, to the assessed value of all real property subject to taxation. The Council, acting by resolution, may extend the time for establishing the rates of taxation. If the Council does extend the time for establishing the rates of taxation of real property, it must establish those rates for the tax year. If the Council does not establish the rates of taxation of real property within twenty days and does not extend the time for establishing the rates, the rates of taxation of real property submitted by the Mayor pursuant to section 47-633 (b) (3) shall be the rates of taxation to be applied during the tax year. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 412, 88 Stat. 1052; June 15, 1976, D.C. Law 1-70, title III, §§ 302 (a), 305, 23 DCR 538, 540; Mar. 3, 1979, D.C. Law 2-130, § 3 (a), 25 DCR 2517; Nov. 20, 1979, D.C. Law 3-37, § 2 (a), 26 DCR 1564.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section by substituting "act" for "resolution" "rates of taxation by class as set forth in section 47-632a" for "a rate or rates of taxation" in the first sentence, and by substituting "does not" for "fails to" twice and "within twenty days" for "by resolution within those twenty days" in the last sentence. Act Nov. 20, 1979, D.C. Law 3-37, amended section by substituting "section 47-632.1 (b), which" for "section 47-632a which, except as provided in section 47-651" in the first sentence and "establishing" for "setting" in the last three sentences, by inserting "tax" in the third sentence, and by inserting "(b) (3)" and by substituting "to be applied during the tax year" for "of real property" in the last sentence.

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of section, see sec. 3 of the Third District of Columbia Renters and Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166); sec. 2 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 2 of the Real Property Tax Classifications Second Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).

1979 — For temporary establishment of the real property tax rates for Tax Year 1979, see secs. 2, 3 and 4 of the Third Real Property Tax Rate Emergency Act for Tax Year 1979 (D.C. Act 3-6, Feb. 15, 1979, 25 DCR 8037); and for temporary establishment, on a second emergency basis, of the real property tax rates for Tax Year 1980, see sec. 2 of the Real Property Tax Rates for Tax Year 1980 Second Emergency Act of 1979 (D.C. Act 3-111, Oct. 26, 1979, 26 DCR 1944).

Legislative History of Law 2-130. See note to § 47-622.1.

Legislative History of Law 3-37. Law 3-37 was introduced in Council and assigned Bill No. 3-141, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 31, 1979 and September 11, 1979, respectively. Signed by the Mayor on September 28, 1979, it was assigned Act No. 3-104 and transmitted to both Houses of Congress for its review.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

New implementing acts. Pursuant to this section the "Real and Personal Tax Rate Act for Tax Year 1978" (D.C. Law 2-44, Feb. 28, 1978, 24 DCR 3637) was enacted.

Pursuant to this section the "Real Property Tax Rate Act for Tax Year 1979" (D.C. Law 2-138, Mar. 3, 1979, 25 DCR 5147) was enacted; pursuant to this section the "Real Property Tax Rates for Tax Year 1980 Act" (D.C. Law 3-40, Dec. 18, 1979, 26 DCR 1950) was enacted.

Section referred to in section. 47-633.

§ 47-632a. Repealed. Nov. 20, 1979, D.C. Law 3-37, § 3, 26 DCR 1564.

Compiler's note. This section had been amended by Act Mar. 3, 1979, D.C. Law 2-130, § 4, prior to its repeal.

Legislative History of Law 3-37. See note to § 47-632.

§ 47-632b. Repealed. Nov. 20, 1979, D.C. Law 3-37, § 3, 26 DCR 1564.

Legislative History of Law 3-37. See note to § 47-632.

§ 47-632.1. Classification of real property.

(a) For the purpose of levying taxes on real property in the District of Columbia, the Council may establish different classes of real property.

(b) For the property tax year beginning July 1, 1979, and ending June 30, 1980, the following classes of real property are established:

(1) *Class One Property.* — Class One Property shall be comprised of improved residential real property which (i) is occupied by the owner thereof, (ii) contains not more than five (5) dwelling units, whether as a row, detached, or semi-detached structure, or is a single dwelling unit owned as a condominium, and (iii) is used exclusively for non-transient residential dwelling purposes. Improved residential real property which is owned by a cooperative housing association shall also be classified as Class One Property: Provided, that at least fifty (50) percent of the dwelling units contained therein are occupied by the shareholders or members of such cooperative housing association.

(2) *Class Two Property.* — Class Two Property shall be comprised of improved residential real property, which (i) is not occupied by the owner thereof, (ii) contains not more than five (5) dwelling units, whether as a row, detached, or semi-detached structure, or is a single dwelling unit owned as a condominium, and (iii) is used exclusively for non-transient residential dwelling purposes. Improved residential real property which is owned by a cooperative housing association shall also be classified as Class Two Property: Provided, that less than fifty (50) percent of the dwelling units contained therein are occupied by the shareholders or members of such cooperative housing association. Nothing in this subsection shall be construed to include hotels in the Class Two Property classification.

(3) *Class Three Property.* — Class Three Property shall be comprised of all real property which is not Class One Property or Class Two Property.

(c) For the property tax year beginning July 1, 1980, and ending June 30, 1981, and for each tax year thereafter, the following classes of real property are established:

(1) *Class One Property.* — Class One Property shall be comprised of improved residential real property which (i) is occupied by the owner thereof, (ii) contains not more than five (5) dwelling units, whether as a row, detached, or semi-detached structure, or is a single dwelling unit owned as a condominium, and (iii) is used exclusively for non-transient residential dwelling purposes. Improved residential real property which is owned by a cooperative housing association shall also be classified as Class One Property: Provided, that at least fifty (50) percent of the dwelling units contained therein are occupied by the shareholders or members of such cooperative housing association.

Vacant real property which abuts improved residential real property qualified as Class One Property shall be classified as Class One Property if said vacant property and the improved residential real property which it abuts have common ownership.

(2) *Class Two Property.* — Class Two Property shall be comprised of improved residential real property, including apartment buildings, which (i) is not occupied by the owner thereof, (ii) contains not more than five (5) dwelling units, whether as a row, detached, or semi-detached structure, or is a single dwelling unit owned as a condominium, and (iii) is used exclusively for non-transient residential dwelling purposes. Improved residential real property which is owned by a cooperative housing association shall also be classified as Class Two Property: Provided, that less than fifty (50) percent of the dwelling units contained therein are occupied by the shareholders or members of such cooperative housing association.

Improved multi-family residential property which contains more than five (5) dwelling units and is used exclusively for non-transient dwelling purposes shall also be classified as Class Two Property.

Vacant real property which abuts improved residential real property qualified as Class Two Property shall be classified as Class Two Property if said vacant property and the improved residential real property which it abuts have common ownership.

The Mayor may require an owner of real property to submit such information relating to the ownership of vacant real property as in the Mayor's judgment will assist in the determination of ownership of such property as required under this section for purposes of real property classification.

(3) *Class Three Property.* — Class Three Property shall be comprised of all real property which is not Class One Property or Class Two Property. Vacant real property which abuts and has common ownership with real property subject to the apportionment provision of subsection (f) of this section shall also be classified as Class Three Property.

(d) For the purposes of subsections (b) and (c):

(1) the term "condominium" means the ownership of a single dwelling unit in a horizontal property regime as that term is used in section 5-903;

(2) the term "cooperative housing association" means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a single dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement;

(3) the term "dwelling unit" means any room or group of rooms forming a single unit which is used for living, sleeping, and the preparation and eating of meals; and

(4) the term "non-transient" means occupancy of a dwelling unit or units by any person(s) for a period of more than five (5) consecutive days during any one stay in such unit(s).

(e) An application properly completed and timely filed in accordance with subsections (c) and (d) (3) of section 47-659.1, shall be required for purposes of classifying real property as Class One Property and imposing the applicable rate of taxation thereon. The Mayor may require an owner of real property to submit such additional information as in the Mayor's judgment will assist in determining the classification of real property under subsections (b) and (c) of this section, such information to be submitted at the time and in the manner prescribed by the Mayor.

(f) Commencing with the property tax year beginning July 1, 1980, and ending June 30, 1981, and for each tax year thereafter, when the uses of real property fall within more than one of the classes enumerated in subsection (c) of this section, the total assessed value of the property shall be apportioned into the appropriate classes of real property as defined in subsection (c) of this section, and each of the areas resulting from the apportionment shall be taxed at the appropriate real property tax rate.

For purposes of this subsection, the Mayor shall devise a method for apportioning, by class, real property whose uses fall within more than one class. The Mayor may require an owner of real property to submit, at a time and in a form prescribed, such information relating to the uses of property as in the Mayor's judgment will assist in the apportionment of property by class for real property classification purposes as required by this section. (Nov. 20, 1979, D.C. Law 3-37, § 2 (b), 26 DCR 1564.)

Emergency Act Amendments.

1979 — For temporary addition of section, see sec. 2 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 2 of the Real Property Tax Classifications Second

Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).

Legislative History of Law 3-37. See note to § 47-632. Section referred to in sections. 47-632, 47-633.

§ 47-632.2. Rules and regulations.

The Mayor of the District of Columbia is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. (Nov. 20, 1979, D.C. Law 3-37, § 7, 26 DCR 1564.)

Emergency Act Amendments.

1979 — For temporary addition of section, see sec. 7 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 7 of the Real Property Tax Classifications Second

Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).

Legislative History of Law 3-37. See note to § 47-632.

§ 47-633. Mayor to recommend tax rate to Council.

(a) By July 1 of each year the Mayor shall calculate and submit to the Council proposed real property tax rates to be applied, during the tax year, to the classes of real property set forth in section 47-632.1 (b). The Mayor shall inform the Council of his or her certification of the assessment roll pursuant to section 47-646 (g). The Mayor may extend the period for submitting such recommendation.

(b) At the time the Mayor submits to the Council the proposed real property tax rates under subsection (a) of this section, he or she shall also submit the following:

(1) The total aggregate assessed value of taxable real property for the year preceding the tax year for which the rates are being recommended, listing the values of such properties by class as set forth in section 47-632.1 (b);

(2) The estimated total aggregate assessed value of taxable real property for the tax year for which the property tax rates are being recommended, listing the values of such properties by class as set forth in section 47-632.1 (b) and indicating separately for each class the estimated value, if any, attributable to new construction; and

(3) The real property tax rates (rounded to the nearest penny) calculated to yield in the tax year the same amount of revenue (exclusive of the revenue attributable to new construction) as was raised by that tax at the rate or rates applicable during the preceding tax year, plus a percentage of such revenue equal to the percentage change between the consumer price index for the first calendar year preceding the tax year and the consumer price index for the second calendar year preceding the tax year. The consumer price index referred to in the preceding sentence shall be the annual average Washington, D.C., all items consumer price index, for all urban consumers, as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(c) The rates of taxation for real property submitted by the Mayor pursuant to subsection (b) (3) shall become the real property tax rates applicable during the tax year for which they are submitted unless the Council acts to establish different rates pursuant to section 47-632.

(d) As soon as possible after the Mayor submits to the Council the proposed real property tax rates under subsection (a) of this section, he or she shall also publish such proposed real property tax rates and the information submitted pursuant to subsection (b) in the District of Columbia Register and in at least one daily newspaper of general circulation published in the District of Columbia.

(e) On or before February 1 of each year, the Mayor shall estimate as closely as possible the rates of taxation for real property to be calculated in subsection (b) (3) of this section and shall so inform the Council. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 413, 88 Stat. 1052; Jan. 3, 1975, Pub. L. 93-635, § 6 (a) (1), (b), 88 Stat. 2176; June 15, 1976, D.C. Law 1-70, title III, §§ 302 (b), 305, 23 DCR 539, 540; Mar. 3, 1979, D.C. Law 2-130, § 3 (b), 25 DCR 2517; Nov. 20, 1979, D.C. Law 3-37, § 2 (c), 26 DCR 1564.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section by rewriting subsection (a), (b), (c) and former (d), and by deleting former subsection (e). Act Nov. 20, 1979, D.C. Law 3-37, amended section by substituting “to be

applied, during the tax year, to the classes of real property set forth in section 47-632.1 (b)” for “for the tax year: Provided, that for the tax year beginning July 1, 1978, and for each tax year thereafter, the Mayor shall calculate and submit to the Council proposed real property tax rates to

be applied to the classes of real property set forth in section 47-632a (b)” in the first sentence of subsection (a), by deleting “for tax years beginning on or after July 1, 1978” following “listing” and substituting “section 47-632.1 (b)” for “section 47-632a (b)” in paragraphs (1) and (2) of subsection (b), by adding “and” at the end of paragraph (2) of subsection (b), by deleting “For real property tax years beginning July 1, 1978, and succeeding tax years” from the beginning of the first sentence of paragraph (3) of subsection (b), by substituting “establish” for “set” in subsection (c), by redesignating former subsection (d) as present subsection (e), and by inserting present subsection (d).

Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); sec. 2 of the Tax Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25

DCR 5084); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978. (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).
1979 — For temporary amendment of section, see sec. 3 of the Third District of Columbia Renters and Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166); sec. 2 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 2 of the Real Property Tax Classifications Second Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).
Legislative History of Law 2-130. See note to § 47-622.1.
Legislative History of Law 3-37. See note to § 47-632.
Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

Subpart B.—Assessment and Administration

§ 47-641. Assessment of real property — Regulations.

Section referred to in section. 47-659.1.

NOTES TO DECISIONS

Congressional purpose of chapter was to revise the tax law so as to achieve, among other objectives, the comparability of tax effort between the District of Columbia and cities of comparable size. *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 47-642. Separate valuation of land and improvements — Appointment of assessors.

* * * * *

(d)(1) The Mayor may require an owner of real property to submit such information relating to the income or economic benefits derived from such property as in the Mayor’s judgment will assist in the determination of the estimated market value required under this title. If an owner of real property in the District of Columbia fails to submit such information within the time and in the form prescribed, there shall be added to the real property tax levied upon the property in question for the next ensuing tax year the amount of ten per centum (10%) of said tax: Provided, that when such information is provided after said time and it is shown that the failure to provide it was due to reasonable cause and was not due to willful neglect, no such addition shall be made to the tax.

(2) All information submitted by a property owner to the Mayor regarding income or economic benefits derived from real property in the District of Columbia shall be accorded the same confidentiality as that applied to District of Columbia income tax returns under section 47-1564c and any violation of such confidentiality shall be punishable as provided in subsection (e) of said section 47-1564c.

(As amended Feb. 28, 1978, D.C. Law 2-45, § 5, 24 DCR 3614.)

Effect of Amendment.
1978 — Act Feb. 28, 1978, D.C. Law 2-45, amended section by adding subsection (d).
Legislative History of Law 2-45. See note to § 47-659.

Cross-reference. For effective date of 1978 amendment, see § 47-659.6.

§ 47-645. Annual notice or statement of assessment — Contents.

Beginning as soon as possible after January 1, but no later than March 1 of each year, each taxpayer shall be notified of the assessment of his real property for the next fiscal year. The notice, or statement accompanying the notice, shall include—

* * * * *

(9) an explanation of all special benefits, incentives, limitations or credits which relate to real property taxes as a result of this or any other act. Included in said explanation shall be an easily understood description of the Property Tax Deferral Program, the Property Tax Credit, the Homestead Exemption and the Incentives for the Preservation of Historic Properties. Each description shall include, but not be limited to, application procedures and qualifying requirements. The title of each property tax relief program shall be capitalized, underlined and printed in bold type.

(As amended Oct. 13, 1978, D.C. Law 2-119, § 2, 25 DCR 1514.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended subsection (9) generally.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 2 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).

Legislative History of Law 2-119. Law 2-119 was introduced in Council and assigned Bill No. 2-324, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on August 1, 1978, it was assigned Act No. 2-249 and transmitted to both Houses of Congress for its review.

Section referred to in section. 47-659.1.

NOTES TO DECISIONS

Cited in Trustees of Nineteenth St. Baptist Church v. District of Columbia (D.C. 1978, 385 A.2d 8).

§ 47-646. Board of Equalization and Review — Meetings — Appeals — Assessment revisions.

(a) There is established a Board of Equalization and Review for the District (hereinafter in this chapter referred to as the "Board") which shall be composed of fifteen members, a majority of whom shall be residents of the District, appointed by the Commissioner, with the advice and consent of the Council. The Council may authorize a larger size if the caseload so requires. Members of the Board shall be persons having knowledge of the valuation of property, real estate transactions, building costs, accounting, finance, or statistics. The Commissioner shall name one member as Chairman. None of the members may be officers of the District of Columbia government. Each member shall serve for a term of five years, except of the members first appointed under this section, the Commissioner shall designate equal numbers for terms of one, two, three, four, and five years. The terms of the members first appointed under this section shall begin on January 1, 1975. Any person appointed to fill a vacancy shall be appointed to serve for the remainder of the term during which the vacancy arose. Each member shall receive compensation at a rate to be determined by the Council unless otherwise prohibited by law, but not to exceed one two-thousandth of the annual salary of the highest step of grade 15 of the General Schedule in section 5332 of title 5 of the United States Code or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1 for each hour such member is engaged in the actual performance of duties vested in the Board.

* * * * *

(i) Any person aggrieved by any assessment, classification, equalization, or valuation made, may, within six months after October 1 of the calendar year in which such assessment, classification, equalization, or valuation is made, appeal from such assessment, classification, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404, if such person shall have first made his complaint to the Board respecting

such assessment as herein provided, except that in any case where no notice in writing of such increase of valuation was given the taxpayer prior to March 15 of the particular year, no such complaint shall be required for appeal.

(As amended Mar. 3, 1979, D.C. Law 2-130, § 3 (c), 25 DCR 2517; Mar. 3, 1979, D.C. Law 2-139, § 3205 (rr), 25 DCR 5740.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section by inserting “classification” in three places in subsection (i). Act Mar. 3, 1979, D.C. Law 2-139, amended section by inserting “or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1” in the last sentence of subsection (a).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 3 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 3 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of subsection (i), see sec. 3 of the Third District of Columbia Renters and Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166).

Legislative History of Law 2-130. See note to § 47-622.1.

Legislative History of Law 2-139. See note to § 1-331.1.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

Section referred to in sections. 1-366.1, 47-633.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

NOTES TO DECISIONS

Pre-appeal complaint held unnecessary in case involving exempt property. — Where property was exempt from taxation it could not subsequently be assessed absent compliance with the procedures prescribed by § 47-710 and a determination that the

property had for some sufficient reason become subject to taxation; and where such procedures were not followed no complaint to the Board was required pursuant to subsection (i). *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

§ 47-649.1. Repealed. Nov. 20, 1979, D.C. Law 3-37, § 8, 26 DCR 1564.

Compiler's note. This section was enacted by Act Mar. 3, 1979, D.C. Law 2-130, § 8.

Legislative History of Law 3-37. See note to § 47-632.

Subpart C.—Homeowner Exemption

§ 47-650. Repealed. Feb. 28, 1978, D.C. Law 2-45, § 10, 24 DCR 3614.

Legislative History of Law 2-45. See note to § 47-659.

Subpart D.—Tax Incentives

§ 47-651. Repealed. July 13, 1978, D.C. Law 2-91, § 503, 24 DCR 9765.

Legislative History of Law 2-91. See note to § 47-3301.

Subpart F.—Tax Deferral

§ 47-655. Tax deferral — Homeowner whose adjusted gross income does not exceed \$20,000.

(a) An eligible taxpayer may defer each year any real property tax owed in excess of 110 per centum of his immediately preceding year's real property tax liability. To be eligible for such deferral the taxpayer must—

(1) have owned for at least one (1) year the residential real property for which deferral is claimed;

(2) certify that the combined household adjusted gross income (for purposes of District income taxes) does not exceed \$20,000 in one year;

(3) file a written application for deferral on a form provided by the Mayor. An application for real property tax deferral may be filed with the Mayor any time prior to the last date an installment payment of the real property taxes which are to be deferred is due;

(4) certify that such residential real property is currently the principal place of residence of the taxpayer and that such residential real property was the principal place of residence for the taxpayer for the twelve (12) month period immediately preceding the application for deferral;

(5) certify that the zoning classification of such residential property has not changed in the immediately past fiscal year;

(6) certify that increases in the assessed valuation of such residential real property attributable to improvements which increase the intrinsic value of such residential real property are not included in the calculation of the increase in real property tax payable; and

(7) certify that the assessment of such residential real property for the immediately previous fiscal year was not the result of an obvious arithmetical error.

(b) If a taxpayer submits a timely application for deferral of real property taxes, the amount of real property tax owed in excess of 110 per centum of the prior year's tax bill shall not constitute delinquent taxes nor shall the taxpayer be assessed any interest for the period said application is pending. A taxpayer shall be eligible to start deferring portions of the increased property tax liability immediately after his or her application has been approved by the Mayor. If the application for deferral is disapproved, the taxpayer shall be notified, in writing, of said disapproval and the reasons therefor and granted an additional thirty (30) days to pay said taxes without interest.

(c) Taxes deferred under this section shall bear interest compounded annually. The rate of interest which shall be applied in each year shall be the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Mayor.

(d) No further deferrals of real property tax shall be granted a taxpayer when the deferred tax plus interest equals more than 20 per centum of the current assessed value of the property for which the deferral is requested.

(e) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the real property which shall be immediately payable by the seller, transferor, or conveyor whenever the real property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the real property. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 435, 88 Stat. 1058; Oct. 13, 1978, D.C. Law 2-119, § 3, 25 DCR 1514.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended section generally.

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 3 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).

Legislative History of Law 2-119. See note to § 47-645.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-1567g.

§ 47-656. Same; homeowner whose adjusted gross income exceeds \$20,000.

* * * * *

(b) If a taxpayer submits a timely application for deferral of real property taxes, the amount of said taxes attributable to an increase by more than 25 per centum over the prior year's tax bill shall not constitute delinquent taxes nor shall the taxpayer be assessed any interest for the period said application is pending. A taxpayer shall be eligible to start deferring portions of the increased property tax liability immediately after his or her application has been approved by the Mayor. If the application for deferral is disapproved, the taxpayer shall be notified, in writing, of said disapproval and the reasons therefor and granted an additional thirty (30) days to pay said taxes without interest.

(c) Taxes deferred under this section shall bear interest compounded annually. Notwithstanding any other provision of law, the rate of interest which shall be applied in each year is the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Mayor.

(d) No further deferrals of real property tax shall be granted a taxpayer when the deferred tax plus interest equals more than 20 per centum of the current assessed value of the property for which the deferral is requested.

(e) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the property which shall be immediately payable by the seller, transferor, or conveyor whenever the property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the property. (As amended Oct. 13, 1978, D.C. Law 2-119, § 4, 25 DCR 1514.)

Effect of Amendment.

1978 — Act Oct. 13, 1978, D.C. Law 2-119, amended section by redesignating subsections (b), (c), (d) and (e) as (c), (d), (e) and (f) and added new subsection (b), by amending redesignated subsection (d) and by deleting redesignated subsection (f).

Emergency Act Amendment.

1978 — For temporary amendment of section, see sec. 4 of the Emergency Property Tax Deferral Reform Act of 1978 (D.C. Act 2-257, Aug. 10, 1978, 25 DCR 2219).

Legislative History of Law 2-119. See note to § 47-645.

Succession in government. The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-1567g.

Subpart H.—Residential Property Tax Relief

§ 47-659. Definitions.

For the purposes of this subpart:

(a) The term “single-family residential property” means real property improved by a dwelling which is used exclusively for non-transient residential purposes and which contains not more than one (1) dwelling unit, whether as a row, detached, or semi-detached structure, or as a single condominium unit in a declared property regime.

(b) The term “cooperative housing association” means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property in the District of Columbia, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement.

(Feb. 28, 1978, D.C. Law 2-45, § 2, 24 DCR 3614; Mar. 3, 1979, D.C. Law 2-130, § 7 (a), 25 DCR 2517.)

Effect of Amendment.

1979 — Act Mar. 3, 1979 D.C. Law 2-130, amended section by redesignating former paragraphs (1) and (2) as present subsections (a) and (b).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of section, see sec. 7 of the Third District of Columbia Renters and

Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166).

Legislative History of Law 2-45. Law 2-45 was introduced in Council and assigned Bill No. 2-127, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings on June 28, 1977, July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-96 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-130. See note to § 47-622.1.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

§ 47-659.1. Single-family residential and cooperative property tax exemption.

(a) For the purpose of computing taxes on real property in the District of Columbia for the tax year beginning July 1, 1977 and ending June 30, 1978, notwithstanding the provisions of section 47-641, there shall be deducted from the estimated market value of a single-family residential property the amount of six thousand dollars (\$6,000): Provided, however, that such deduction shall not exceed the estimated market value of that property.

(b) For the purpose of computing taxes on real property in the District of Columbia for the tax year beginning July 1, 1978, notwithstanding the provisions of section 47-641, there shall be deducted from the estimated market value of a single-family residential property which is the principal place of residence of its owner and from the estimated market value of a residential property with five (5) or fewer dwelling units which includes the principal place of residence of its owner the amount of nine thousand dollars (\$9,000): Provided, however, that such deduction shall not exceed the estimated market value of the property. To determine the owner's principal place of residence, the Mayor shall devise a form for an affidavit and mail it to the owner along with the notice of assessment required under section 47-645. In order to obtain the deduction provided under this subsection (b), the owner shall complete the affidavit and return it to the Mayor within sixty (60) days of the date such affidavit form was mailed to the owner. The Mayor may verify the contents of the affidavit. The Mayor may grant a reasonable extension of time, not to exceed sixty (60) days, for filing the affidavit whenever in his or her judgment good cause exists therefor.

(c) (1) For the purpose of computing taxes on real property in the District of Columbia for the tax year beginning July 1, 1979, and for each tax year thereafter, notwithstanding the provisions of section 47-641, the amount of nine thousand dollars (\$9,000) shall be deducted from the estimated market value of improved residential real property which (i) is occupied by the owner thereof, (ii) contains not more than five (5) dwelling units, whether as a row, detached, or semi-detached structure, or is a single dwelling unit owned as a condominium, and (iii) is used exclusively for non-transient residential dwelling purposes: Provided, that such deduction shall not exceed the estimated market value of the property.

(2) In order to obtain the deduction provided for under this subsection, owners of eligible real property shall complete and file with the Mayor, on or before June 1 preceding the tax year, an application form devised by the Mayor: Except, that for the tax year beginning July 1, 1979, and ending June 30, 1980, said application form shall be completed and filed with the Mayor on or before July 1, 1979. The Mayor may verify the contents of such applications. The Mayor may, upon written application thereof, grant a reasonable extension of time, not to exceed thirty (30) days, for filing the application whenever in his or her judgment good cause exists therefor.

(3) where there is a change in ownership of residential real property after June 1, but before the beginning of the new tax year on July 1, the new owner shall immediately notify the Mayor of such change of ownership and, in order to obtain the deduction provided for under this subsection, shall file, on or before July 15, an application as provided for in this subsection.

(4) To implement this subsection, the Mayor shall devise an application form and mail it to the owners of real property potentially eligible for the deduction under clause (ii) of paragraph (1) of this subsection on or before April 1 of each year. Failure of the Mayor to mail an application form to an owner of residential real property eligible for the deduction provided for under this subsection shall in no manner diminish the obligation of the owner to secure and file in a timely manner an application in order to receive the deduction.

(d) (1) For the purpose of computing taxes on real property in the District of Columbia for the tax year commencing July 1, 1977, the Mayor shall deduct from the estimated market value of residential real property owned by a cooperative housing association and occupied by the members of such association the amount of twelve percent (12%) of the estimated market value of said property: Provided, however, that the deduction may not exceed the amount of six thousand dollars (\$6,000) multiplied by the number of dwelling units which are the principal place of residence of members of such association.

(2) For the purpose of computing taxes on real property in the District of Columbia for the tax year commencing July 1, 1978 and for each year thereafter, the Mayor shall deduct from the estimated market value of residential real property owned by a cooperative housing association and occupied by the shareholders or members of such association the amount of eighteen percent (18%) of the estimated market value of said property: Provided, however, that the deduction may not exceed the amount of nine thousand dollars (\$9,000) multiplied by the number of dwelling units which are occupied by the shareholders or members of such association.

(3) In order to obtain the deduction provided under paragraph (2) of this subsection and to determine the occupancy of shareholders or members of cooperative housing associations, each shareholder or member shall, at such times and in such manner as the Mayor shall prescribe, complete and return the application form provided for under subsection (c) of this section. The Mayor may require the officers or managers of each cooperative housing association to distribute the application forms to its shareholders or members and to collect the completed application forms from such shareholders or members for return to the Mayor. Such officers or managers shall supply such other information as the Mayor may require.

(4) Notwithstanding the provisions of subsection (d) (1) of this section, for the tax year commencing July 1, 1977 only, tax bills relating to residential real property owned by cooperative housing associations shall not reflect the deduction from estimated market value provided for in said subsection (d) (1). Such tax bills shall be paid in the full amount shown thereon at the times provided for in said subsection (d) (1). The amount of the deduction shall be determined by the Mayor at the earliest practicable time after receipt of the required affidavits and shall be refunded to the owners of such property, such refunds to be made from current real property tax revenues.

(e) In relation to property tax bills required to be paid on September 15, 1977 and on March 31, 1978 by owners of property eligible for the exemption provided in subsection (a) of this section:

(1) The Mayor shall indicate on each tax bill, to the extent feasible, the fact and amount of the exemption and shall enclose with such tax bills a notice which includes at least the following information:

(A) the amount of the deduction;

(B) the name of this subpart and the date on which it was enacted by the Council of the District of Columbia; and

(C) the exact amount by which the deduction has reduced the property owner's tax bill.

(2) Any mortgage lender, including but not limited to a savings and loan association, a commercial bank, and a mortgage banker which receives such a property tax bill and pays it on behalf of the owner of the property in question shall forward to said property owner not later than four (4) months after the date on which the property tax payment is due:

(A) a copy of said property tax bill; and

(B) a copy of the notice required by subsection (e) (1) of this section.

(f) In relation to property tax bills required to be paid after March 31, 1978 the information specified in paragraphs (e) (1) (A) and (e) (1) (C) of this section shall be included on the face of each tax bill. Nothing in this subsection shall diminish the duty of the Mayor to include an explanation of the exemption provided in subsection (a) of this section on a notice of assessment, as required by section 47-645 (9). (Feb. 28, 1978, D.C. Law 2-45, § 3, 24 DCR 3614; Mar. 3, 1979, D.C. Law 2-130, § 7 (b), 25 DCR 2517; Nov. 20, 1979, D.C. Law 3-37, § 6, 26 DCR 1564.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section by substituting "nine thousand dollars (\$9,000)" for "six thousand dollars (\$6,000)" in the first sentence of subsection (b), and in former subsection (c), by deleting "and for each tax year thereafter" following "1977" in paragraph (1), by redesignating former paragraphs (2) and (3) as present paragraphs (3) and (4), and by inserting present paragraph (2). Act Nov. 20, 1979, D.C. Law 3-37,

amended section by redesignating former subsections (c) through (e) as present subsections (d) through (f) and by inserting present subsection (c). This section was further amended by deleting "and for each tax year thereafter" following "1978" in the first sentence of subsection (b), by inserting "shareholders or" twice and substituting "occupied by the" for "the principal place of residence of" in paragraph (2) of subsection (d), by rewriting the first two sentences of paragraph (3) of subsection (d), by

substituting “(d) (1)” for “(c) (1)” in the first two sentences of paragraph (4) of subsection (d), and by changing internal references throughout subsections (e) and (f) to conform to the redesignation of subsections.

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of section, see sec. 7 of the Third District of Columbia Renters and Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166); sec. 6 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); sec. 6 of the

Real Property Tax Classifications Second Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544); sec. 2 of the Property Tax Relief Application Deadline Extension Emergency Act of 1979 (D.C. Act 3-108, Oct. 12, 1979, 26 DCR 1827); and sec. 2 of the Property Tax Relief Application Deadline Extension Second Emergency Act of 1979 (D.C. Act 3-141, Dec. 21, 1979, 27 DCR 21).

Legislative History of Law 2-45. See note to § 47-659.

Legislative History of Law 2-130. See note to § 47-622.1.

Legislative History of Law 3-37. See note to § 47-632.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

Section referred to in sections. 47-632.1, 47-659.3, 47-659.4.

§ 47-659.2. Report to the Council of the District of Columbia on assessment changes for the highest-assessed properties.

Not later than April 1st of each year, the Mayor shall submit a report to the Council of the District of Columbia with the following information:

(a) the assessment changes, if any, made on the thirty (30) taxable commercial and multi-family residential properties which had the highest assessments in the District of Columbia for the previous property tax year;

(b) an explanation for each such assessment change reported under subsection (1) of this section; and

(c) the changes in the assessment of each of the thirty (30) properties referred to in subsection (1) of this section over the previous four (4) property tax years.

(Feb. 28, 1978, D.C. Law 2-45, § 6, 24 DCR 3614; Mar. 3, 1979, D.C. Law 2-130, § 7 (c), 25 DCR 2517.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-130, amended section by redesignating former paragraphs (1), (2) and (3) as present subsections (a), (b) and (c).

Emergency Act Amendments.

1978 — For temporary amendment of section, see sec. 7 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); and sec. 7 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of section, see sec. 7 of the Third District of Columbia Renters and

Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166).

Legislative History of Law 2-45. See note to § 47-659.

Legislative History of Law 2-130. See note to § 47-622.1.

Compiler's changes. The reference to subsection (1) in subsections (2) and (3) referred to subsection (a) in the original act.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

§ 47-659.3. Mayor to gather and report information relating to single-family residential and residential cooperative properties.

(a) On or before the date the Mayor transmits to the Council of the District of Columbia a recommended property tax rate for the property tax year beginning on July 1, 1978, the Mayor shall report the following information to the Council of the District of Columbia:

(1) the number of units in each residential real property owned by a cooperative housing association in the District of Columbia and occupied by the members of said association;

(2) the estimated market value of each said residential property for the two (2) most recent assessments; and

(3) a recommendation for a real property tax assessment exemption that would be applied to each individual unit in said property.

(b) The Mayor shall report to the Council of the District of Columbia each year on or before the date the Mayor submits a budget to this Council, as required under section 47-221, the number of properties the Mayor expects to be benefited by the deductions provided in section 47-659.1, according to the type of property, for the fiscal year to which said budget applies and the amount of revenue which the District of Columbia will forego because of said deductions. (Feb. 28, 1978, D.C. Law 2-45, § 7, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.4. Council of the District of Columbia to review single-family residential and cooperative property tax exemptions annually.

The Council of the District of Columbia shall review by July 1st of each year the residential and cooperative property tax relief provided under section 47-659.1 and shall adjust the relief whenever in its view such adjustment is necessary to reduce excessive residential and cooperative property tax burdens and to maintain equity among and between the owners of different classes of real property. (Feb. 28, 1978, D.C. Law 2-45, § 8, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.5. Authorization to establish regulations.

The Mayor is authorized to develop the necessary forms and procedures and to establish regulations necessary to carry out the provisions of this subpart. (Feb. 28, 1978, D.C. Law 2-45, § 9, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

Cross reference. For authorization of Mayor to promulgate rules and regulations, see § 47-632.2.

§ 47-659.6. Effective date.

(a) This subpart shall apply to the property tax year beginning on July 1, 1977 and to each property tax year thereafter.

(b) This subpart shall take effect as provided for acts of the Council of the District of Columbia in section 1-147 (c) (1). (Feb. 28, 1978, D.C. Law 2-45, § 12, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

§ 47-659.7. Severability.

The provisions of this subpart are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the subpart or their application to other persons or circumstances. (Feb. 28, 1978, D.C. Law 2-45, § 11, 24 DCR 3614.)

Legislative History of Law 2-45. See note to § 47-659.

Subchapter III.—Miscellaneous

§ 47-661. Regulations — Penalties.

NOTES TO DECISIONS

Authority to issue regulations is delegated by this section including even the authority to establish penalties for violations of this chapter or regulations issued pursuant thereto. *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 47-662. Regulations to administer residential property tax relief.

The Mayor may promulgate rules and regulations for the proper administration of the provisions of sections 47-655 and 47-656. (Oct. 13, 1978, D.C. Law 2-119, § 5, 25 DCR 1514.)

Legislative History of Law 2-119. See note to § 47-645.

CHAPTER 7.—ASSESSMENT OF REAL PROPERTY

§ 47-710. Real property and improvements becoming subject to taxation to be listed annually.

NOTES TO DECISIONS

Application of section is not limited to new structures or improvements to old structures. *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

Pre-appeal complaint held unnecessary in case involving exempt property. — Where property was exempt from taxation it could not subsequently be assessed absent compliance with the procedures prescribed by this section and a determination that the property had for some sufficient reason become subject to taxation; and where such procedures were not followed no complaint to the Board of Equalization and Review was required pursuant to § 47-646 (i). *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

CHAPTER 8.—EXEMPTIONS FROM TAXATION

| Sec. | Sec. |
|---|--|
| 47-801a. Government property — Property of educational, charitable, religious or scientific institutions — Profits arising from sale of property. | 47-801c. Report as to use of exempt property. 47-801f. Rules and regulations. |

§ 47-801a. Government property — Property of educational, charitable, religious or scientific institutions — Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

* * * * *

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

* * * * *

(t) Multi-family rental and cooperative housing for low and moderate income persons who are receiving assistance through one or more of the following federal programs:

(1) interest reduction payments made under section 236 of the National Housing Act (12 U.S.C. § 1715z-1);

(2) payments made for new construction and substantial rehabilitation under section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f);

(3) payments made under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. § 1701s);

(4) mortgage insurance under section 221 (d) (3), BMIR, of the National Housing Act, (12 U.S.C. § 1715l (d) (3)); and

(5) direct loans made under section 202 of the Housing Act of 1959 (12 U.S.C. § 1701q):

Provided however, that the owner(s) of such exempt property shall submit by March 1 of each year an annual income and expense statement to the District of Columbia Department of Finance and Revenue and shall make a yearly payment in lieu of taxes in an amount calculated in the following manner:

(A) if the owner(s) is not organized for profit, no payment shall be required; and

(B) if the owner(s) is organized as a limited dividend or limited profit owner, or a profit owner, a payment for such building, in an amount equal to five (5) percent of the gross income derived from the operation of such building during the latest completed annual accounting period, shall be required.

If the owner(s) of exempt property fail to make the payment in lieu of taxes in a manner which the Department of Finance and Revenue shall prescribe, such property shall be subject to the provisions of section 47-1001 et seq.

This subsection shall not apply to those properties granted an exemption before January 5, 1971, under subsection (h) of this section.

(As amended Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of Amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting the second sentence of subsection (h) and adding subsection (t).

Legislative History of Law 2-116. Law 2-116 was introduced in Council and assigned Bill No. 2-285, which was referred to the Committee on Housing and Urban

Development and to the Committee on Finance and Revenue for comments. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978 and July 11, 1978, respectively. Signed by the Mayor on July 26, 1978, it was assigned Act No. 2-243 and transmitted to both Houses of Congress for its review.

Section referred to in sections. 47-801c, 47-801f.

NOTES TO DECISIONS

Regulation invalid as inconsistent with intent of section. — Regulation requiring that real property be occupied and used by the organization seeking exemption for at least one of the types of categories of exempt purposes described in this section is invalid as inconsistent with the legislative intent of this section. *District of*

Columbia v. Catholic Univ. of America (D.C. 1979, 397 A.2d 915).

Concurrence of ownership and use are not necessary to the exemption of buildings under subsection (j) of this section. *District of Columbia v. Catholic Univ. of America* (D.C. 1979, 397 A.2d 915).

§ 47-801b. Income producing property of exempt institutions.

Section referred to in section. 47-801f.

§ 47-801c. Report as to use of exempt property.

Every institution, organization, corporation, or association owning property exempt under the provisions of paragraphs (d) to (t), inclusive, of section 47-801a shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Mayor of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year: Provided however, that the requirement for a report shall be satisfied by submitting an application for exemption from tax, and an income and expense statement pursuant to section 47-801a (t). Upon written application by the institution, organization, corporation, or association filed before March 1 of any year, the Mayor may extend the time for filing said report for a reasonable period. A copy of such report shall be forwarded to the Congress by the Mayor.

If such report is not filed within the time provided herein, or as extended by the Mayor, the property of the institution, organization, corporation, or association affected shall immediately be assessed and taxed until the required report is filed: Provided, however, that such tax shall be for a minimum period of thirty days. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 3; Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of Amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting “(q)” and inserting “(t)” in lieu thereof and by inserting the proviso at the end of the first sentence.

Legislative History of Law 2-116. See note to § 47-801a.

Succession in government. The District of Columbia

Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Section referred to in section. 47-801f.

§ 47-801f. Rules and regulations.

The Mayor of the District of Columbia is authorized to make and promulgate such rules and regulations as he may deem necessary to carry out the intent and purposes of sections 47-801a, 47-801b and 47-801c to 47-801f: Provided, that such rules and regulations shall include provision for mailing annually, on or before February 1 of each year, to each of the institutions, organizations, corporations, or associations required by section 47-801c to file annual reports, notice of its contingent tax liability under sections 47-801a, 47-801b and 47-801c to 47-801f, together with a copy of any standard form for such reports which shall have been prescribed by the Mayor of the District of Columbia under authority of this section. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 6; Sept. 29, 1943, 57 Stat. 568, ch. 248; Oct. 4, 1978, D.C. Law 2-116, § 2, 25 DCR 1735.)

Effect of amendment.

1978 — Act Oct. 4, 1978, D.C. Law 2-116, amended section by deleting everything in the first sentence before the word “Provided” and inserting in lieu thereof “The Mayor of the District of Columbia is authorized to make and promulgate such rules and regulations as he may

deem necessary to carry out the intent and purposes of sections 47-801a, 47-801b and 47-801c to 47-801f:” and by deleting the word “Commissioner” in the proviso clause and inserting in lieu thereof the word “Mayor.”

Legislative History of Law 2-116. See note to § 47-801a.

CHAPTER 10.—REAL PROPERTY TAX SALES

Sec.

47-1001a. Notice to record owner of amount of tax levy.

§ 47-1001. Delinquent tax list — Publication of notice — Competitive proposals — Sale.

Section referred to in section. 47-801a.

NOTES TO DECISIONS

Notice provisions require strict compliance, and where a notice which appeared on September 19 and 20, 1972, announced that a delinquent tax list had been published on September 23, 1972, that notice of a publication which had

not yet taken place was not sufficient and was therefore fatally defective. *Shenandoah Corp. v. Pringle* (D.C. 1978, 385 A.2d 748).

§ 47-1001a. Notice to record owner of amount of tax levy.

Annually and subsequent to July 1, the assessor of the District of Columbia shall mail to the record owner of each lot or parcel of land upon which a real estate tax has been levied by the District of Columbia as of July 1 of the same year, a notice of the amount of such real estate tax, and of the manner in which the amount of such real estate tax is payable according to law; and such notice shall state whether there were any delinquent real estate taxes unpaid on July 1 of the year in which such notice is sent: Provided, that if the address of the owner be unknown,

such notice shall be mailed to his agent, if known; and if there be more than one record owner of any lot or parcel, notice mailed to one of the owners shall be deemed compliance with this section: Provided further, that nothing in this section shall affect in any way the provisions of section 47-1103: Provided further, that failure of the property owner or his agent to receive such notice shall not relieve the property owner of the payment of any penalty or interest as required by law for the delinquent payment of real estate taxes: Provided further, that the term "record owner" shall include one or more persons whose leasehold interest or interests in a leasehold condominium, as that term is defined in section 5-1202 (r), extends for the entire balance of the unexpired term or terms. (June 25, 1938, ch. 702, § 12, as added Oct. 5, 1943, 57 Stat. 570, ch. 256; Dec. 18, 1979, D.C. Law 3-40, § 5, 26 DCR 1950.)

Effect of Amendment.

1979 — Act Dec. 18, 1979, D.C. Law 3-40, amended section by adding the last proviso.

Legislative History of Law 3-40. See note to § 47-631.

§ 47-1002. Sale of property — Purchase by District.

NOTES TO DECISIONS

Cited in *Shenandoah Corp. v. Pringle* (D.C. 1978, 385 A.2d 748).

§ 47-1003. Deposit required — Certificate of sale — Tax deed — Redemption.

NOTES TO DECISIONS

Penalties on delinquent taxes have same status as the principal debt. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

Government priority in proceeds from tax sale. — Where private and public claims compete for the proceeds

from a condemnation or tax sale, payment to the government takes priority over satisfaction of private interests. *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. Dec. 105).

§ 47-1006. Report of tax sale to be filed with recorder of deeds — Disposition of surplus on redemption.

NOTES TO DECISIONS

Cited in *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

§ 47-1011. Liens on real estate for unpaid taxes — Enforcement — Redemption before sale.

NOTES TO DECISIONS

Cited in *District of Columbia v. Franklin Inv. Co.* (D.C. 1979, 404 A.2d 536); *District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares* (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

CHAPTER 11.—SPECIAL ASSESSMENTS

§ 47-1105. Assessment for removal of nuisance — Sale for nonpayment.

(As amended Mar. 16, 1978, D.C. Law 2-52, § 2, 24 DCR 4832.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-52, reenacted the first sentence of the section without change.

Legislative History of Law 2-52. Law 2-52 was introduced in Council and assigned Bill No. 2-185, which was referred to the Committee on Finance and Revenue

and to the Committee on Housing and Urban Development for comments. The Bill was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on December 7, 1977, it was assigned Act No. 2-113 and transmitted to both Houses of Congress for its review.

CHAPTER 12.—TAXATION OF PERSONAL PROPERTY

Sec.

47-1209. Payment of taxes — Late payment penalty —
Mandamus to compel filing sworn return —
Expenses.

§ 47-1207. Rate of taxation — Exceptions.

New implementing acts. Pursuant to this section the “Personal Property Tax Rate Act for Tax Year 1979” (D.C. Law 2-88, June 30, 1978, 24 DCR 9755) was enacted.

Pursuant to this section the “Personal Property Tax Rate for Tax Year 1980 Act” (D.C. Law 3-6, June 7, 1979, 25 DCR 9648) was enacted.

§ 47-1209. Payment of taxes — Late payment penalty — Mandamus to compel filing sworn return — Expenses.

Real estate taxes are due and payable in full on or before September 15 annually except that where the real estate tax is less than \$100,000, such tax shall be due and payable semiannually in two equal installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. Except that the real estate taxes for cooperative housing associations with tax liabilities of \$100,000 or more, shall be payable in two installments, the first installment to be paid on or before September 15, and the second installment to be paid on or before March 31. For the purposes of this section, the term “cooperative housing association” means an association, whether incorporated or unincorporated, organized for the purpose of owning and operating residential real property, the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease or other evidence of membership, are entitled to occupy a single dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement. Personal taxes of all kinds are due and payable in full at the time prescribed for the filing of the tax return. If any such tax, or any installment thereof, is not paid within the time prescribed, there shall be added to such tax or installment a penalty of 10% of the unpaid amount plus interest on such unpaid amount at the rate of 1% per month or portion of a month until the tax or installment is paid. The amount of unpaid tax, or installment thereof, plus the penalty or interest due, shall constitute a delinquent tax to be collected in the manner prescribed by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Mayor of the District of Columbia that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Mayor may, by petition to the Superior Court of the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 18, 1954, 68 Stat. 112, ch. 218, § 606; July 29, 1970, Pub. L. 91-358, title I, § 155(c)(48), 84 Stat. 573; June 15, 1976, D.C. Law 1-70, title III, § 301, 23 DCR 537; Apr. 19, 1977, D.C. Law 1-124, title III, § 301(a), 23 DCR 8749; Apr. 18, 1978, D.C. Law 2-73, § 2, 24 DCR 7066.)

Effect of Amendment.

1978 — Act Apr. 18, 1978, D.C. Law 2-73, amended section by inserting the second and third sentences of the first paragraph.

Legislative History of Law 2-73. See note to § 25-103.

Chapter 15.—INCOME AND FRANCHISE TAXES

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| Subchapter II. — Income and Franchise Taxes for Taxable Years After January 1, 1947 | Title VIII. — Tax on Unincorporated Businesses |
| Title I. — Repeal of Prior Income Tax Law and Applicability of Subchapter; General Definitions | Sec. |
| Sec. | 47-1574b. Imposition and rate of tax. |
| 47-1551c. General definitions. | Title X. — Purpose of Subchapter and Allocation and Apportionment |
| Title II. — Exempt Organizations | 47-1580a. Allocation and apportionment. |
| 47-1554. Exempt organizations. | 47-1580b. Allocation of income and deductions between organizations, etc. |
| 47-1555. Administration. | Title XII. — Assessment and Collection; Time of Payment |
| 47-1556. Effective date. | 47-1586. Duties of Mayor. |
| Title III. — Net Income, Gross Income and Exclusions Therefrom, and Deductions | 47-1586a. Statements and special returns. |
| 47-1557a. Gross income and exclusions therefrom. | 47-1586b. Examination of books and witnesses. |
| 47-1557b. Deductions. | 47-1586c. Return by Mayor. |
| Title IV. — Accounting Periods, Installment Sales, and Inventories | 47-1586d. Determination and assessment of deficiency. |
| 47-1561. Accounting periods. | 47-1586e. Jeopardy assessment. |
| 47-1561d. Inventories. | 47-1586f. Payment of tax. |
| 47-1561e. Mayor may reject method of accounting employed by taxpayer. | 47-1586g. Withholding of tax. |
| Title V. — Returns | 47-1586h. Tax a personal debt. |
| 47-1564. Form of returns and duty to file — Certificates of nonresidence. | 47-1586i. Period of limitation upon assessment and collection. |
| 47-1564a. Requirement — Who must file. | 47-1586j. Refunds. |
| 47-1564b. Filing of returns. | 47-1586k. Closing agreements. |
| 47-1564c. Divulging of information. | 47-1586l. Compromises. |
| Title VI. — Tax on Residents and Nonresidents | 47-1586n. Payment to Mayor and receipts. |
| 47-1567d. Credits against tax. | Title XIII. — Penalties and Interest |
| 47-1567g. Credit for property taxes accrued and payable by District of Columbia residents. | 47-1589. Failure to file return. |
| Title VII. — Tax on Corporations | 47-1589a. Interest on deficiencies. |
| 47-1571a. Imposition and rate of tax. | Title XIV. — Licenses |
| | 47-1591. Requirement. |
| | 47-1591d. Revocation. |
| | 47-1591e. Renewal. |

Subchapter II.—Income and Franchise Taxes for Taxable Years After January 1, 1947

Title I.—Repeal of Prior Income Tax Law and Applicability of Subchapter; General Definitions

§ 47-1551. Repeal of subchapter I and retention of certain provisions thereof.

Section referred to in section. 45-1699.4.

§ 47-1551c. General definitions.

For the purposes of this subchapter and wherever appearing herein, unless otherwise required by the context —

* * * * *

(b) The word “Mayor” means the Mayor of the District of Columbia or his duly authorized representative or representatives.

(c) The word “person” means an individual (other than a fiduciary), a fiduciary, a partnership (other than an unincorporated business), an association, an unincorporated business, and a corporation.

(d) The word “individual” means all natural persons (other than fiduciaries), whether married or unmarried.

(e) The word “fiduciary” means a guardian, trustee, executor, committee, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any person.

(f) The words “trade or business” include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia, including the performance of the functions of a public office and the leasing of real or personal property in the District of Columbia by any person whether or not the property is leased directly by such person or through an agent, and whether or not such person or agent performs any services in connection with the property: Provided, however, that the words “trade or business” shall not include, for the purposes of this subchapter —

(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or representative having an office or other place of business in the District, during the taxable year; or

(2) Repealed. Oct. 21, 1975, D.C. Law 1-23, title VI, § 609, 22 DCR 2114.

For purposes of this proviso, the words “agent” or “representative” shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.

(g) The word “taxpayer” means any person required by this subchapter to pay a tax, file a return or report, or apply for a license.

(h) The words “fiscal year” mean an accounting period of twelve months ending on the last day of any month other than December.

(i) The words “taxable year” mean the calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this subchapter; if no fiscal year has been established by the taxpayer, they mean the calendar year. The phrase “taxable year” includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this subchapter or under regulations prescribed by the Mayor, the period for which such return is made: Provided, however, that no taxpayer may change from a calendar year to a fiscal year or from a fiscal year to a calendar year within any taxable year without the written permission of the Mayor.

(j) (1) The term “capital asset” means property defined or treated as a capital asset under the Internal Revenue Code of 1954.

(2) For the purpose of computing for any taxable year the tax imposed under this subchapter with respect to sales or other dispositions of property referred to in subparagraph (1), the provisions of the Internal Revenue Code of 1954 relating to the treatment of gains and losses (other than the alternative tax imposed by section 1201 of such Code) shall apply.

(k) The word “dividend” means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation, except that in the case of any such distribution any part of which for purposes of the income tax imposed under the Internal Revenue Code of 1954 is deemed to constitute a capital gain, such part shall be deemed to constitute a capital gain for purposes of

the tax imposed by this subchapter: Provided, however, that in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation and not exempted from tax under this subchapter, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: And provided, however, that the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

(l) The word "stock" includes a share in any association, joint-stock company, or insurance company.

(m) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(n) The words "include," "includes," or "including," when used in a definition contained in this subchapter, shall not be deemed to exclude other things otherwise within the meaning of the word or words defined.

(o) The word "deficiency" as used in this subchapter with respect to any tax imposed by this subchapter means —

(1) the amount or amounts by which the tax imposed by this subchapter as determined by the Mayor exceeds the amount shown as the tax by the taxpayer upon his return; or

(2) the amount assessed as a tax by the Mayor if no return is filed by the taxpayer.

(p) The word "corporation" includes any trust, association, joint-stock company, or partnership which is classed or should be classed as a corporation for purposes of Federal income taxation.

(q) The word "resident" means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The word "resident" shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year.

(r) The word "nonresident" means every individual other than a resident.

(s) The term "dependent" means a dependent as defined in section 152 of the Internal Revenue Code of 1954 [26 U.S.C. § 152].

(t) The term "head of a family" means an individual who maintains in one household one or more dependents as defined in paragraph (s) of this section. The term "head of a family" means an individual who is single, or if married, separated from husband or wife.

(u) The term "wages" means wages as defined in section 3401 (a) of the Internal Revenue Code of 1954.

(v) The term "payroll period" means payroll period as defined in section 3401 (b) of the Internal Revenue Code of 1954.

(w) The term "employer" means employer as defined in section 3401 (d) of the Internal Revenue Code of 1954.

(x) The term "employee" shall apply only to individuals having a place of abode or residing or domiciled within the District at a time a tax is required to be withheld by an employer, and to every other individual who maintained a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The term "employee" shall include an officer of a corporation, but shall not include any elective officer of the Government of the United States or any officer or employee in the legislative branch of the Government of the United States whose compensation is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure

of the President of the United States, unless such officer of the executive branch is domiciled within the District on the last day of the taxable year.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-150, § 2, 25 DCR 7038; Mar. 6, 1979, D.C. Law 2-158, §§ 4, 5, 25 DCR 7002.)

Effect of Amendments.
1979 — Act Mar. 3, 1979, D.C. Law 2-150, amended section, in the introductory language of former subsection (h), by substituting “including” for “and include” and by inserting “and the leasing of real or personal property in the District of Columbia by any person whether or not the property is leased directly by such person or through an agent, and whether or not such person or agent performs any services in connection with the property.” Act Mar. 6, 1979, D.C. Law 2-158, amended section by deleting former subsections (c) and (d), by redesignating former subsections (e) through (z) as present subsections (c) through (x), by substituting “Mayor” for “Commissioner” twice in subsection (b) and once in the last sentence of subsection (i), and by substituting “Mayor” for “Assessor” in the proviso of the last sentence of subsection (i) and twice in subsection (o).

Legislative History of Law 2-150. Law 2-150 was introduced in Council and assigned Bill No. 2-394, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-339 and transmitted to both Houses of Congress for its review.
Legislative History of Law 2-158. See note to § 47-1631.
Effective date. Section 3 (a) of Act Mar. 3, 1979, D.C. Law 2-150, provided that the 1979 amendment to subsection (h) of this section shall apply to taxable years beginning on or after Jan. 1, 1979.

Title II.—Exempt Organizations

§ 47-1554. Exempt organizations.

The following organizations shall be exempt from taxation under this subchapter, except to the extent that such organizations have unrelated business taxable income subject to tax under section 511 of the Internal Revenue Code of 1954 [26 U.S.C. § 511], in which event such organizations shall be subject to tax under this article on said unrelated business taxable income:

* * * * *

(d) Corporations, and any community chest, fund, or foundation, organized and operated to a substantial extent within the District, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private individual or shareholder, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in section 501 (h) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(h)) and which does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-147, § 2, 25 DCR 6987.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-147, amended section, in subsection (d), by inserting “to a substantial extent within the District” and “substantial” preceding “part of the activities,” by deleting “to a substantial extent within the District” following “animals” and “and” following “shareholder,” and by adding “(except as otherwise provided in subsection 501 (h) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(h))) and which does not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.”

Legislative History of Law 2-147. Law 2-147 was introduced in Council and assigned Bill No. 2-377, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-324 and transmitted to both Houses of Congress for its review.
Section referred to in section. 1-1173.

§ 47-1555. Administration.

The Mayor of the District of Columbia is authorized to promulgate regulations to carry out the purposes of sections 47-1555 and 47-1556 and may amend, by regulation, the appropriate provisions of Title 16 of the District of Columbia Rules and Regulations. (Mar. 3, 1979, D.C. Law 2-147, § 3, 25 DCR 6987.)

Legislative History of Law 2-147. See note to § 47-1554.

Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-147, provided: "That this act may be cited as the

'District of Columbia Charitable Organizations Conformity Tax Act of 1978.' "

Section referred to in section. 47-1556.

§ 47-1556. Effective date.

Sections 47-1555 and 47-1556 shall apply to taxable years beginning after December 31, 1977. (Mar. 3, 1979, D.C. Law 2-147, § 4 (a), 25 DCR 6987.)

Legislative History of Law 2-147. See note to § 47-1554.
Section referred to in section. 47-1555.

Title III.—Net Income, Gross Income and Exclusions Therefrom, and Deductions

§ 47-1557a. Gross income and exclusions therefrom.

* * * * *

(b) The words "gross income" shall not include the following:

* * * * *

(13) Income derived from the sale of tangible personal property to the United States by corporations and unincorporated businesses having their principal places of business located outside the District, which property is delivered from places outside the District for use outside the District: Provided, however, that the taxpayer shall furnish to the Mayor a statement in writing of the amount of gross sales so made and, if required by the Mayor, a list of the names of the agencies of the United States through which such property was sold.

* * * * *

(17) *Foreign corporation real property investment income.* — Income derived by a foreign corporation authorized to invest in loans secured by real estate, which does not maintain any office, officer, agent, representative or employees for the purpose of making, maintaining, or liquidating such investment, in the District of Columbia, provided that the only activities of such foreign corporation in the District of Columbia, other than those of a liaison employee, are one or more of the following:

* * * * *

(G) pending liquidation of its investment within such period, not to exceed one year, as the Mayor may by regulation prescribe, operating, maintaining, renting or otherwise dealing with, selling or disposing of real property acquired by foreclosure, sale, or by agreement in lieu thereof: Provided, that if, upon the expiration of the period prescribed by the Mayor, such property has not been sold or otherwise disposed of, such foreign corporation shall be subject to tax on all of the income derived by the corporation arising out of its ownership of such property, but such liability shall not be construed as affecting the exclusion from gross income of income from other loans made or acquired by it in accordance with this paragraph (17).

Income derived from the ownership of real property and not excludible from gross income as provided in this paragraph (17) shall be reported to the Mayor by the person servicing the

corporation's loans in the District of Columbia or by a participating bank in the District of Columbia at such times and in such manner, together with such information, as the District of Columbia Council may by regulation require, and if there be no such person servicing loans or participating bank, then the corporation shall itself make such report of income including any other income derived from District of Columbia sources which is includible in gross income under this article. Any person or corporation who shall fail to report such income to the Mayor, as herein provided, shall be guilty of a misdemeanor and shall be fined not more than \$500.

As used herein, the term "liaison employee" shall mean a person who does not engage in or make, maintain, or liquidate any investment of the foreign corporation and who is engaged by the foreign corporation solely for the purpose of establishing and maintaining contacts with governments and international bodies and agencies thereof; arranging conferences for, receiving and furnishing legislative publications and other information or material of interest to, transmitting information for, and arranging transportation or other accommodations for, officers or other personnel of such foreign corporation within, or to and from, the District of Columbia.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section, in subsection (b), by substituting "Mayor" for "Assessor" twice in the proviso of paragraph (13), and by substituting "Mayor" for "Commissioner" twice in subparagraph (G) of paragraph (17) and twice in the first undesignated paragraph following subparagraph (G).

Legislative History of Law 2-158. See note to § 47-1631.

Effective date of 1977 amendment. Section 2 of act Apr. 18, 1978, D.C. Law 2-73, 24 DCR 7066, provided that subsection b of section 1101 of act Apr. 19, 1977, D.C. Law

1-124, 23 DCR 8749 (set out as footnote to section 47-1557a in Supplement V) be amended as follows:

"b. That portion of section 301 relating to the single payment date for real estate taxes in the amount of \$100,000 or more shall apply with respect to taxes becoming due and payable after June 30, 1979. The remaining portions of section 301, including the provisions relating to the payment of personal taxes of all kinds and of real estate taxes by cooperative housing associations, shall apply with respect to taxes, or installments thereof, becoming due and payable after June 30, 1978."

NOTES TO DECISIONS

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

§ 47-1557b. Deductions.

(a) *Deductions allowed.* — The following deductions shall be allowed from gross income in computing net income:

* * * * *

(5) *Bad debts.* — Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the Mayor, a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the Mayor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. No debt which existed prior to January 1, 1939, shall be allowed as a deduction.

* * * * *

(7) *Depreciation.* — A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the District of Columbia Council is hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47-1583e. In the case of property held by any taxpayer on the first day of his first taxable year beginning after December 31, 1968, which, on such first day, was property described in this paragraph, any reduction in the basis of such property for purposes of computing the allowance under this

paragraph which resulted from the enactment of the District of Columbia Revenue Act of 1969 shall be treated as an additional depreciation deduction which shall (subject to paragraph (14)) be allowable under this paragraph ratably over such period (beginning not earlier than the first taxable year of the taxpayer which begins after December 31, 1968), not to exceed ten taxable years, as may be agreed upon by the taxpayer and the Mayor.

* * * * *

(14) *Allocation of deductions.* — In the case of corporations and unincorporated businesses, the deductions provided for in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District within the meaning of sections 47-1580 to 47-1580b; and the proper apportionment and allocation of the deductions to be allowed shall be determined by the Mayor under formula or formulas provided for in section 47-1580a.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section, in subsection (a), by substituting “Mayor” for “Assessor” twice in paragraph (5) and once in paragraph

(14), and by substituting “Mayor” for “Commissioner” in the last sentence of paragraph (7).
Legislative History of Law 2-158. See note to § 47-1631.

NOTES TO DECISIONS

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Title IV.—Accounting Periods, Installment Sales,
and Inventories

§ 47-1561. Accounting periods.

The net income shall be computed upon the basis of the taxpayer’s annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Mayor does clearly reflect the income. If the taxpayer’s annual accounting period is other than a fiscal year as defined in section 47-1551c (h) or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income tax return, his income shall be computed, for the purposes of this title, on the basis of the same calendar or fiscal year as in such Federal income tax return, if the basis is accepted and approved by the Commissioner of Internal Revenue. (July 16, 1947, 61 Stat. 339, ch. 258, Art. I, title IV, § 1; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first sentence.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1561d. Inventories.

Whenever in the opinion of the Mayor the use of inventories is necessary in order to properly determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Mayor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, title IV, § 5; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Assessor" twice.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1561e. Mayor may reject method of accounting employed by taxpayer.

Notwithstanding any other provisions of this subchapter, the Mayor is hereby authorized to reject any return of income reported on a cash basis where, in his opinion, the net income of the taxpayer is not properly reflected and cannot be determined on such basis, and to require the return to be filed on such a basis as in his opinion will properly reflect the net income of the taxpayer. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, Title IV, § 6; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Assessor."

Legislative History of Law 2-158. See note to § 47-1631.

Title V.—Returns**§ 47-1564. Form of returns and duty to file — Certificates of nonresidence.**

(a) *Form of returns.* — The Mayor is hereby authorized and directed to prescribe the forms of returns. All returns required under this title shall be filed on the forms and in the manner prescribed by the Mayor.

(b) *Taxpayer to make return whether form is sent or not.* — Blank forms of returns of income shall be supplied by the Mayor. It shall be the duty of the Mayor to obtain an income tax return from every taxpayer who is liable under this subchapter to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so.

(c) *Information returns.* — Every person subject to the jurisdiction of the District in whatever capacity acting, including receivers or mortgagors of real or personal property, fiduciaries, partnerships, and employers making payment of dividends, interest, rent, premiums, annuities, compensations, remunerations, emoluments, or other income to any person subject to tax under this subchapter, shall render such returns thereof to the Mayor as he may by rule prescribe.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Assessor" in the first and second sentences of subsections (a) and (b), and near the end of subsection (c).

Legislative History of Law 2-158. See note to § 47-1631.

Section referred to in section. 47-1564c.

§ 47-1564a. Requirement — Who must file.

Each of the following persons shall file a return with the Mayor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this subchapter, and such other information for the purpose of carrying out the provisions of this subchapter as the Mayor may require:

* * * * *

(c) *Joint fiduciaries.* — A return by one of two or more joint fiduciaries filed with the Mayor shall be sufficient compliance with the provisions of subsection (b) of this section.

* * * * *

(e) (1) *Corporations.* — Every corporation engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47-1580 to 47-1580b. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or are engaged in or carrying on the trade or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

(2) Affiliated corporations shall file separate returns unless permitted by the Mayor to file consolidated returns.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” twice in the introductory language, and once each in subsection (c) and in paragraph (2) of subsection (e).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1564b. Filing of returns.

(a) *Time and place for filing returns.* — All returns of income for the preceding taxable year required to be filed under the provisions of section 47-1564 shall be filed with the Mayor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year, shall be filed on or before the fifteenth day of the fourth month following the close of such fiscal year.

(b) *Extension of time for filing returns.* — The Mayor may grant a reasonable extension of time for filing the returns required by section 47-1564a whenever in his judgment good cause exists therefor, and he shall keep a record of every such extension. Except in case of a taxpayer who is not within the continental limits of the United States, no such extension shall be granted for more than six months, and in no case shall such extension be granted for more than one year. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, title V, § 3; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in subsection (a) and in the first sentence of subsection (b).

Legislative History of Law 2-158. See note to § 47-1631.
Section referred to in section. 47-3309.

§ 47-1564c. Divulging of information.

(a) *Secrecy of returns.* — Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner the amount of income or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under section 47-1564, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: Provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$3.50. The provisions of this subsection shall also be applicable to any federal, state, or local income tax returns or copies thereof and to any other federal, state, or local income tax information either submitted by the taxpayer or otherwise obtained.

(b) *Reciprocal exchange of information with the United States and the several States.* — Notwithstanding the provisions of this section, the Mayor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect

income tax returns filed with the Mayor or may furnish to such officer or representative a copy of any such income tax returns provided the United States or such State grant substantially similar privileges to the Mayor or his representative or to the proper officer of the District charged with the administration of this title. The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Mayor relative to any person subject to the taxes imposed by this subchapter.

(c) *Publication of statistics.* — Nothing contained in subsection (a) of this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Mayor may assist in the collection of such delinquent taxes.

(d) *Information which may be disclosed.* — Nothing contained in subsection (a) of this section shall be construed to prohibit the Mayor, in his discretion, from divulging or making known any information contained in, or relating to, any report, application, license, or return required under the provisions of this subchapter other than such information as may be contained therein relating to the amount of income or any particulars relating thereto or the computation thereof.

(e) *Penalties for violation of this section.* — Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$1,000, by imprisonment for not more than one year, or both, in the discretion of the court. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(f) *Preservation of returns.* — All reports, applications, and returns received by the Mayor under the provisions of this subchapter shall be preserved for six years, and thereafter until the Mayor orders them to be destroyed.

(g) *Disclosure to contractor.* — Notwithstanding the provisions of subsection (a), any tax returns or other tax information required by this subchapter may be disclosed to a contractor to the extent necessary to provide for the processing, storage, transmission, or reproduction of such returns and information or for the programming, maintenance, repair, testing, and procurement of equipment for purposes of tax administration. The provisions of subsections (a) and (e) shall be applicable to all such contractors and former contractors and to their officers and employees and former officers and employees. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, title V, § 4; July 29, 1970, Pub. L. 91-358, title I, § 155 (a), 84 Stat. 570; Mar. 16, 1978, D.C. Law 2-57, § 3, 24 DCR 5426; Mar. 6, 1979, D.C. Law 2-158, §§ 2, 4, 25 DCR 7002.)

Effect of Amendments.

1978—Act Mar. 16, 1978, D.C. Law 2-57, amended section by deleting the figure “2.” in the first sentence of subsection (a) and inserting in lieu thereof the figure “3.50.”

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by inserting “or any former officer or employee” in the first sentence and adding the second sentence in subsection (a), by substituting “Mayor” for “Assessor” three times in the first sentence and “Mayor” for “Assessor or Collector” once in the second sentence of subsection (b), by substituting “Mayor” for “Assessor” in subsections (c), (d) and (f), by substituting “by

imprisonment for not more than one year” for “or imprisonment for six months” in subsection (e), and by adding subsection (g).

Emergency Act Amendments.

1978—For temporary amendment of section, see sec. 2 of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322); and sec. 2 of the Tax Return Confidentiality Second Emergency Act of 1978 (D.C. Act 2-332, Dec. 29, 1978, 25 DCR 7017).

Legislative History of Law 2-57. See note to § 47-306.

Legislative History of Law 2-158. See note to § 47-1631.

Title VI.—Tax on Residents and Nonresidents

§ 47-1567d. Credits against tax.

(a) *Credit against tax allowed District of Columbia residents.* — The amount of tax payable under this title by a resident of the District in respect to the taxable year shall be reduced by a credit equal to the amount of individual income tax such individual is required to pay and, in fact, has paid to any State, territory or possession of the United States, or political subdivision thereof, upon income attributable to such State, territory or possession of the United States, or political subdivision thereof, for such taxable year or portion thereof while concurrently a resident of the District. The credit provided under this subsection shall not exceed the proportion of the tax otherwise due under this subchapter that the amount of the individual's adjusted gross income received by him, or accrued to him if on an accrual basis, subject to tax in the other jurisdiction bears to his entire adjusted gross income received by him, or accrued to him, while he was concurrently a resident of the District. The Mayor may require satisfactory proof of the payment of such income taxes to another jurisdiction. The credit provided by this subsection shall not be allowed against any tax imposed under sections 47-1574 to 47-1574e.

* * * * *

(d) This section shall take effect in accordance with the provisions of section 1-147(c) (1) and shall apply to taxable years beginning after December 31, 1978.

(As amended Mar. 3, 1979, D.C. Law 2-146, §§ 2, 3, 25 DCR 6987; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendments.

1979 — Act Mar. 3, 1979, D.C. Law 2-146, amended section by rewriting subsection (a) and by adding subsection (d). Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Assessor" in the next-to-last sentence of subsection (a).

Legislative History of Law 2-146. Law 2-146 was introduced in Council and assigned Bill No. 2-370, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-323 and transmitted to both Houses of Congress for its review.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

(a) (1) For purposes of providing relief to certain District of Columbia residents who own their principal place of residence and who reside in the same, an income tax credit shall be allowed to the eligible claimant equal to the amount by which all or a portion of real property taxes the taxpayer pays on his or her principal place of residence for the taxable year exceeds a percentage (as determined under paragraph (2) of this subsection) of his or her household gross income for that year. District of Columbia residents who rent their principal place of residence, who reside in the same and who are eligible claimants under the provisions of this section, shall be allowed an income tax credit equal to the amount by which rent paid constituting property taxes, deemed for the purposes of this subsection to be 15% of rent, on his or her principal place of residence for the taxable year, exceeds a percentage (as determined under paragraph (2) of this subsection) of his or her household gross income for that year and which exceeds the amount of any rental supplement payments, received by the claimant pursuant to the provisions of Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4), during that year. The credit shall not exceed a total of seven hundred fifty dollars (\$750).

(2) For taxable years beginning after December 31, 1977, the percentage required under paragraph (1) of this subsection to be determined for claimants other than elderly, blind, or disabled claimants shall be the percentage specified in the following table:

Regular Circuit Breaker

| If Household Gross Income is: | Tax Credit Equals: |
|-------------------------------|---|
| \$0 — \$2,999 | 95% of property tax* exceeding 1.5% of household gross income |
| \$3,000 — \$4,999 | 75% of property tax* exceeding 2.0% of household gross income |
| \$5,000 — \$6,999 | 75% of property tax* exceeding 2.5% of household gross income |
| \$7,000 — \$9,999 | 75% of property tax* exceeding 3.0% of household gross income |
| \$10,000 — \$14,999 | 75% of property tax* exceeding 3.5% of household gross income |
| \$15,000 — \$20,000 | 75% of property tax* exceeding 4.0% of household gross income |

* or rent paid constituting property tax (15% of rent)

(3) For taxable years beginning after December 31, 1977, the percentage required under paragraph (1) to be determined for elderly, blind or disabled claimants shall be the percentage specified in the following table:

Elderly, Blind, or Disabled Circuit Breaker

| If household gross income is: | The credit shall equal the amount of property taxes paid or rent paid constituting property taxes (15% of rent) which is in excess of the following percentage of household gross income: |
|-------------------------------|---|
| Under \$4,999 | 1.0% |
| \$5,000 to \$9,999 | 1.5% |
| \$10,000 to \$14,999 | 2.0% |
| \$15,000 to \$20,000 | 2.5% |

(4) All eligible claimants who rent their principal place of residence, who reside in the same and who receive rental supplements under the provisions of Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4), shall, when computing their income tax credit pursuant to this section, deduct from the amount of said credit the total amount of rental supplements received during the taxable year. The amount of credit which is in excess of any rental supplements received shall constitute the eligible claimant’s total income tax credit under this section. If the amount of rental supplements received exceeds the amount of credit calculated under this section, then the eligible claimant’s credit shall equal zero.

(b) For purposes of this section:

(1) (A) The term “household gross income” means gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees, or income derived from any trade or business or sales or dealings in property whether real or personal, including capital assets as defined in this subchapter growing out of the ownership or sale of or interest in such property; income from rent, royalties, interest, dividends, securities, of transactions of any trade or business carried on for gain or profit, or gains or profits and income derived from any source whatever, including but not limited to alimony, and separate maintenance payments (including amounts received under separate maintenance agreements), strike benefits, cash public assistance and relief (not including relief or credit

granted under this section), sick pay, workmen's compensation, proceeds of life insurance policies, the gross amount of any pension or annuity (including railroad retirement benefits, veterans' disability pensions, or payment received under the Federal Social Security Act [42 U.S.C. § 301 et seq.]), State or District of Columbia unemployment compensation laws, and nontaxable interest received from the United States, a State or any agency or instrumentality thereof. The word "income" does not include gifts from nongovernmental sources, food stamps, or food or other relief in kind supplied by a governmental agency.

* * * * *

(5) The term "elderly claimant" means a claimant who is sixty-two (62) years of age or older during any tax year or part thereof beginning after December 31, 1976 and who, together with his or her spouse, if any, provides fifty percent (50%) or more of the household gross income of the household of which he or she is a part.

(6) The term "blind claimant" means a claimant whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(7) (A) The term "disabled claimant" means a claimant unable to engage in any gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. Certification of such physical or mental impairment shall be attested to by a licensed physician selected by the claimant at his or her own expense. Such claims and certification shall be submitted in such form and in such manner and at such time as the Mayor shall prescribe.

(B) In the event that the Mayor shall determine that a claim made under the provisions of this subsection is unsubstantiated by available evidence, the Mayor may require the claimant to be examined by a licensed physician chosen by the Mayor at the expense of the District of Columbia government.

(8) (A) The term "rent paid" is that amount paid by a claimant to a landlord solely for the right of occupancy of a home in the District, including the right to use the personal property located therein. Utility charges may be included in the amount of rent paid if they are included in the amount paid to a landlord in connection with the right to occupancy. "Rent paid" does not include: rental supplements obtained under the provisions of Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4); advance rental payments for another period; rental deposits, whether or not expressly set out in the rental agreement; any charges for medical services or food provided by the landlord; or payments made to a landlord for the right of occupancy of property which is exempt from District real property taxes.

(B) The term "rent constituting property taxes accrued" means 15 per centum of the rent paid in any calendar year by a claimant solely for the right of occupancy of his home in the calendar year, and which constitutes the basis of a claim in the succeeding calendar year for a credit for property taxes paid.

* * * * *

(e) (1) Beginning with calendar year 1977 and for each succeeding calendar year, if a claimant owns and occupies his or her home in the District on December 31 of any such year, "property taxes accrued" means real property taxes (exclusive of special assessments, interest on a delinquency in payment of tax, and penalties and services charges) as reflected on the District real estate tax bill ordinarily sent out in September of such year: Provided, however, that any amount of real property tax deferred under the provisions of section 47-655 or 47-656 shall be considered as "property taxes accrued" for the purpose of determining the credit allowable under this section. If a home is an integral part of a larger unit such as a multipurpose building or a multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the home bears to the total value of the property.

* * * * *

(As amended Feb. 28, 1978, D.C. Law 2-45, § 4, 24 DCR 3614; Mar. 3, 1979, D.C. Law 2-130, § 6, 25 DCR 2517; Nov. 20, 1979, D.C. Law 3-37, § 5, 26 DCR 1564.)

Effect of Amendments.

1978—Act Feb. 28, 1978, D.C. Law 2-45, amended section by amending paragraph (2) of subsection (a) generally and by redesignating paragraph (5) of subsection (b) as paragraph (8) and adding new paragraphs (5), (6) and (7) to subsection (b).

1979 — Act Mar. 3, 1979, D.C. 2-130, amended section, in subsection (a), by amending the first sentence generally and adding the second sentence in paragraph (1), by rewriting paragraph (2), by redesignating former paragraph (2) (C) as present paragraph (3) and rewriting that paragraph, and by adding paragraph (4). The act also, in subsection (b), inserted “or any rental supplement provided under authority of Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4)” in the parentheses in the first sentence of paragraph (1) (A), designated the provisions of paragraph (7) as subparagraph (A), rewrote that subparagraph, and added subparagraph (B), and deleted “or on behalf of” following “paid by” in the first sentence and inserted “rental supplements obtained under the provisions of Title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4)” in the last sentence of paragraph (8) (A), and in the first sentence of paragraph (1) of subsection (e), inserted “or her,” deleted “any” preceding “penalties,” substituted “services” for “service” and added the proviso. Act Nov. 20, 1979, D.C. Law 3-37, amended section by substituting “paragraph (2) of this subsection” for “subsection (a) (2) of this section” in the first two sentences and adding the last sentence in paragraph (1) of subsection (a), by inserting “gross” in the table contained in paragraph (2) of subsection (a), and by deleting “or any

rental supplement provided under authority of title III of the Rental Housing Act of 1977 (D.C. Code, secs. 45-1698 to 45-1699.4)” following “section” in subsection (b) (1) (A).

Emergency Act Amendments.

1978—For temporary amendment of section, see sec. 6 of the District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-265, Aug. 30, 1978, 25 DCR 2436); sec. 2 of the Tax Amendments Emergency Act of 1978 (D.C. Act 2-293, Nov. 1, 1978, 25 DCR 5084); and sec. 6 of the Second District of Columbia Renters and Homeowners Tax Reduction Emergency Act of 1978 (D.C. Act 2-305, Nov. 27, 1978, 25 DCR 5514).

1979 — For temporary amendment of section, see sec. 6 of the Third District of Columbia Renters and Homeowners Tax Reduction Emergency Act (D.C. Act 3-12, Feb. 23, 1979, 25 DCR 8166); sec. 5 of the Real Property Tax Classifications Emergency Act for Tax Year 1980 (D.C. Act 3-56, June 29, 1979, 26 DCR 1); and sec. 5 of the Real Property Tax Classifications Second Emergency Act for Tax Year 1980 (D.C. Act 3-103, Sept. 28, 1979, 26 DCR 1544).

Legislative History of Law 2-45. See note to § 47-659.

Legislative History of Law 2-130. See note to § 47-622.1.

Legislative History of Law 3-37. See note to § 47-632.

Definitions applicable. The definitions in § 47-422.1 apply to terms appearing in this section.

Cross-reference. For effective date of 1978 amendment, see § 47-659.6. For authorization of Mayor to promulgate rules and regulations, see § 47-632.2.

Section referred to in section. 45-1698.

Title VII.—Tax on Corporations

§ 47-1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of twelve per centum (12%) upon the taxable income of every corporation, whether domestic or foreign, (except those expressly exempt under title II of this subchapter); (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of nine per centum (9%) upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under title II of this subchapter); and (c) for the taxable years beginning on or after January 1, 1976, a surtax at the rate of ten per centum (10%) of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be twenty-five dollars (\$25.00). (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(a), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(1), 83 Stat. 178; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 401, 403, 85 Stat. 653, 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 603, 22 DCR 2111; July 27, 1976, D.C. Law 1-77, § 2, 23 DCR 1218; Mar. 16, 1978, D.C. Law 2-58, § 201, 24 DCR 5765.)

Effect of Amendment.

1978—Act March 16, 1978, D.C. Law 2-58, amended section generally.

Legislative History of Law 2-58. See note to § 47-3101.

NOTES TO DECISIONS

Company could not claim federal exemption. — Court did not have to decide whether 15 U.S.C. §§ 381-384, prohibiting states from taxing certain income derived from interstate commerce, applied to the District of Columbia since the sales representatives of the company taxed under this section had established permanent offices within the

District, thereby putting the company's activities outside the protection of the federal statute. *Jantzen, Inc. v. District of Columbia* (D.C. 1978, 395 A.2d 29).

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Title VIII.—Tax on Unincorporated Businesses

§ 47-1574. Definition of unincorporated business.

NOTES TO DECISIONS

Effect of section. — This section repealed an existing “professional exemption,” thereby allowing the District of Columbia to impose an unincorporated business tax upon unincorporated professionals and personal service businesses. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Professional tax of this section is an invalid exercise of the Council's legislative authority under the Home Rule Act. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Unincorporated business tax is an income tax. *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

§ 47-1574a. Taxable income defined.

NOTES TO DECISIONS

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

§ 47-1574b. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied (a) for one taxable year beginning on or after January 1, 1975, a tax at the rate of twelve per centum (12%) upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under title II of this subchapter); (b) for the taxable years beginning on or after January 1, 1976, a tax at the rate of nine per centum (9%) upon the taxable income of every unincorporated business, whether domestic or foreign, (except those expressly exempt under title II of this subchapter); (c) for the taxable years beginning on or after January 1, 1976, a surtax at the rate of ten per centum (10%) of the tax determined under clause (b) hereof. The minimum tax payable under this section shall be twenty-five dollars (\$25.00). (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(b), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a)(2), 83 Stat. 179; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 402, 404, 85 Stat. 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 604, 22 DCR 2112; July 27, 1976, D.C. Law 1-77, § 3, 23 DCR 1219; Mar. 16, 1978, D.C. Law 2-58, § 202, 24 DCR 5765.)

Effect of Amendment.
1978—Act March 16, 1978, D.C. Law 2-58, amended section generally.

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-1574c. Exemption.

NOTES TO DECISIONS

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

§ 47-1574d. By whom payable.

NOTES TO DECISIONS

Cited in *Bishop v. District of Columbia* (D.C. 1979, 401 A.2d 955).

Title X.—Purpose of Subchapter and Allocation and Apportionment

§ 47-1580a. Allocation and apportionment.

The entire net income of any corporation or unincorporated business, derived from any trade or business carried on or engaged in wholly within the District shall, for the purposes of this subchapter, be deemed to be from sources within the District, and shall, along with other income from sources within the District, be allocated to the District. If the trade or business of any corporation or unincorporated business is carried on or engaged in both within and without the District, the net income derived therefrom shall, for the purposes of this subchapter, be deemed to be income from sources within and without the District. Where the net income of a corporation or unincorporated business is derived from sources both within and without the District, the portion thereof subject to tax under this subchapter shall be determined under regulation or regulations prescribed by the District of Columbia Council. The Mayor is authorized to employ any formula or formulas provided in any regulation or regulations prescribed by the Council under this subchapter which, in his opinion, should be applied in order to properly determine the net income of any corporation or unincorporated business subject to tax under this subchapter. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 2; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the last sentence.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1580b. Allocation of income and deductions between organizations, etc.

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Mayor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, whenever in his opinion such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said Act. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 3; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first sentence.

Legislative History of Law 2-158. See note to § 47-1631.

Title XII.—Assessment and Collection; Time of Payment

§ 47-1586. Duties of Mayor.

The Mayor is hereby required to administer the provisions of this subchapter. As soon as practicable after the return is filed, the Mayor shall examine it and shall determine the correct amount of tax. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 1; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first and second sentences.

Legislative History of Law 2-158. See note to § 47-1631. Section referred to in section. 47-3309.

§ 47-1586a. Statements and special returns.

Every person upon whom the duty is imposed by this subchapter to file any applications, returns, or reports or who is liable for any tax imposed by this subchapter shall keep such records, render under oath such statements, and comply with such rules and regulations as the Mayor from time to time may prescribe. Whenever the Mayor deems it necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as he believes sufficient to show whether or not such person is liable to tax under this subchapter and the extent of such liability. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 2; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first and second sentences.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586b. Examination of books and witnesses.

The Mayor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the Mayor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the Mayor may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Mayor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Mayor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than \$300. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155 (a), (c) (51), 84 Stat. 570, 573; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” throughout the section.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586c. Return by Mayor.

If any person fails to make and file a return at the time prescribed by law or by regulations made under authority of law, or makes, willfully or otherwise, a false or fraudulent return, the Mayor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the Mayor shall be prima facie good and sufficient for all legal purposes. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 4; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first and second sentences.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586d. Determination and assessment of deficiency.

If a deficiency in tax is determined by the Mayor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail or by certified mail, in which to file a protest and shall cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the Mayor, and a final decision thereon shall be made as quickly as practicable. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 5; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1 (54); Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first and second sentences.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586e. Jeopardy assessment.

(a) *Authority for making.* — If the Mayor believes that the collection of any tax imposed by this subchapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Mayor for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.* — The collection of the whole or any part of the amount of such assessment may be stayed by filing with the Mayor a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the Mayor deems necessary, conditioned upon the payment of the amount the collection of which is stayed, at the time at which, but for this section, such amount would be due. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, title XII, § 6; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first sentence of subsection (a), and by substituting

“Mayor” for “Collector” in the second sentence of subsection (a) and twice in subsection (b).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586f. Payment of tax.

(a) *Time of payment.*

* * * * *

(3) *Deficiencies.* — Any deficiency in any tax imposed by this subchapter, determined by the Mayor under the provisions of section 47-1586d shall be due and payable within ten days from the date of the assessment.

* * * * *

(5) *Jeopardy withholding assessments.* — If the Mayor, in any case, has reason to believe that the collection of the tax provided for in paragraph (4) of subsection (a) of this section is in jeopardy, he may require the employer to make such a return and pay such tax at any time.

* * * * *

(b) *Extension of time for payments.* — At the request of the taxpayer the Mayor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: Provided, however, that where the time for filing a return is extended for a period exceeding six months under the provisions of section 47-1564b (b), the Mayor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in paragraphs (3) and (5) of subsection (a) and twice in subsection (b).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586g. Withholding of tax.

(a) *Withholding of tax at source.* — Whenever the District of Columbia Council shall deem it necessary in order to satisfy the District’s claim for a tax payable by any foreign corporation or unincorporated business, it may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the Mayor an amount not in excess of 5 per centum of all income payable by such person to such foreign corporation or unincorporated business. After such foreign corporation or unincorporated business shall have filed all returns required under this title, and the same shall have been audited, the Mayor shall refund any overpayment to the taxpayer.

(b) *Withholding of tax by employer.* — Every employer making payment of wages on or after October 1, 1956, to any employee as defined in this subchapter, shall deduct and withhold a tax upon such wages, such tax to be determined by one of the following methods, to be elected by the employer, subject to the approval of the Mayor, with respect to any employee—

* * * * *

(e) *Withholding exemptions.*

* * * * *

(5) If, on any day during the calendar year, the withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the exemptions to which the employee is entitled on such day, the employee shall in such cases and at such times as the Mayor may prescribe, furnish the employer with a

withholding exemption certificate relating to the exemptions which he claims with respect to such next taxable year, which shall in no event exceed the exemptions to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

* * * * *

(f) *Failure to withhold or pay amounts withheld.* — (1) Every employer, who fails to withhold or pay to the Mayor any sums required by this section to be withheld and paid, shall be personally and individually liable therefor to the District of Columbia; and any sum or sums withheld in accordance with the provisions of this section shall be deemed to be, and shall be, held in trust by the employer for the District of Columbia.

(2) The District of Columbia shall have a lien upon all the property of any employer who fails to withhold or pay over to the Mayor sums required to be withheld under this section. If the employer withholds but fails to pay over the amounts withheld to the Mayor the lien shall accrue on the date the amounts were withheld. If the employer fails to withhold, the lien shall accrue on the date the amounts were required to be withheld.

* * * * *

(h) *Liability for tax withheld.* — An employer shall be liable for the payment of tax required to be deducted and withheld under this section. Such tax shall be paid to the Mayor and shall not be paid to any other person.

(i) *Declarations, requirements, time for filing.*

* * * * *

(4) The declaration required under paragraph (1) of this subsection shall be filed with the Mayor on or before April 15 of the taxable year, except that if the requirements of paragraph (1) of this subsection are first met —

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Collector” in the first and second sentences of subsection (a), in subsection (f)(1), in the first and second sentences of subsection (f)(2) and in the second sentence of subsection (h), by substituting “Mayor” for “Assessor” in the first

paragraph of the introductory language of subsection (b) and in the introductory language of subsection (i)(4), and by substituting “Mayor” for “Commissioner” in the first sentence of subsection (e)(5).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586h. Tax a personal debt.

Every tax imposed by this subchapter, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District and shall be entitled to the same priority as other District taxes, and the taxes levied under this subchapter and the interest and penalties thereon shall be collected by the Mayor in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, title XII, § 9; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Collector.”

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586i. Period of limitation upon assessment and collection.

(a) *General rule.* — Except as provided in subsections (b), (c), (d) and (e) of this section —

* * * * *

(2) in the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return is filed. This subsection shall not apply in the case of a corporation unless —

(A) such written request notifies the Mayor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

* * * * *

(c) *Waiver.* — Where before the expiration of the time prescribed in subsection (a) for the assessment of the tax, both the Mayor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.* — Where the assessment of any income tax imposed by this subchapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within three years after the assessment of the tax or (2) prior to the expiration of any period for collection agreed upon in writing by the Mayor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(e) *Extension of period of limitation.* — If the amount of taxable income for any taxable year or part thereof of any taxpayer as declared by such taxpayer or his duly authorized agent to the United States Treasury Department for Federal income tax purposes is changed or corrected by the Commissioner of Internal Revenue, or by any court of the United States, or by any court of the District of Columbia or if the amount of taxable income for any taxable year or part thereof of any taxpayer as declared by such taxpayer or his duly authorized agent to the District of Columbia for District of Columbia income or franchise tax purposes is changed or corrected by any court of the United States or by any court of the District of Columbia, such taxpayer or his duly authorized agent shall, within ninety days after such change or correction is finally determined, report in writing such changed or corrected taxable income to the District of Columbia. The Mayor or his duly authorized representative may within one hundred and eighty days from the date of the receipt of written notice from the taxpayer or his duly authorized agent of such changed or corrected taxable income as finally determined, assess or reassess the amount of any tax imposed by this subchapter: Provided, however, that, in the event the date of receipt by the District of Columbia of a notice from the taxpayer or his duly authorized agent is more than one hundred and eighty days prior to the expiration of the applicable period of limitations provided for in subsection (a) of this section, the Mayor or his duly authorized representative shall have until the expiration of such applicable period to assess or reassess the amount of any tax imposed by this subchapter. Failure to report such changed or corrected taxable income as finally determined with the time stated herein shall suspend the running of the period of limitation for a period of one hundred and eighty days after the date such report from the taxpayer or his duly authorized agent is received by the District of Columbia.

For the purposes of this subsection, the words “finally determined” mean any irrevocable determination or adjustment of the taxpayer’s liability for tax, from which there exists no further right of appeal or review, either administrative or judicial. This subsection shall apply with respect to taxable years beginning on or after January 1, 1975.

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002; Sept. 28, 1979, D.C. Law 3-21, § 2, 26 DCR 386.)

Effect of Amendments.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in subsection (a) (2) (A), and in the first sentences of subsections (c) and (d). Act Sept. 28, 1979, D.C. Law 3-21, amended section by substituting “subsections (b), (c), (d) and (e)” for “subsection (b)” in the introductory language of subsection (a), and by adding subsection (e).

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the Emergency District of Columbia Income and Franchise Tax Statute of Limitations Extension Act of 1979 (D.C. Act 3-43, May 22, 1979, 25 DCR 10356); and sec.

2 of the Second Emergency District of Columbia Income and Franchise Tax Statute of Limitations Extension Act of 1979 (D.C. Act 3-72, Aug. 1, 1979, 26 DCR 626).

Legislative History of Law 2-158. See note to § 47-1631.

Legislative History of Law 3-21. Law 3-21 was introduced in Council and assigned Bill No. 3-132, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 5, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-65 and transmitted to both Houses of Congress for its review.

§ 47-1586j. Refunds.

(a) *Refund to taxpayer.* — Except as to any deficiency taxes assessed under the provisions of section 47-1586d, where there has been an overpayment of any tax imposed by this subchapter, the amount of such overpayment may be credited against any liability in respect of any income or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the person who made the overpayment, and the balance shall be refunded to such person.

No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Mayor may determine to have been an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. The amount of such credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of such credit or refund. Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Mayor: Provided, that if it shall be determined by the Mayor, the Superior Court of the District of Columbia, or any court that any part of any tax which was assessed as a deficiency under the provisions of section 47-1586d was an overpayment, interest shall be allowed and paid upon such overpayment at the rate of one-third of 1 per centum per month or portion of a month from the date such overpayments were paid until the date of refund, and in addition thereto any interest upon such overpayment which was paid by the taxpayer shall be refunded.

(b) *Refund to employer.* — Where there has been an overpayment of tax under section 47-1586g, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld under section 47-1586g by the employer.

(2) Unless written application for refund or credit is received by the Mayor from the employer within three years from the date the overpayment was made, no refund or credit shall be allowed.

(c) *Refund of overpayment of tax withheld.*

* * * * *

(3) Authority to refund overpayments of taxes collected pursuant to section 47-1586g is vested in the Mayor or his duly authorized representatives. Such refunds shall be made from moneys paid pursuant to the provisions of section 47-1586g and retained in a special account in the Treasury of the United States. The total amount so retained shall not exceed \$500,000 at any one time. Any excess in such special account not required for refunding overpayments collected pursuant to section 47-1586g at any time, as determined by the Mayor, shall be transferred to the general fund of the District.

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first and third sentences of the second paragraph of subsection (a), in subsection (b) (2) and in the last sentence

of subsection (c) (3), and by substituting “Mayor” for “Commissioner” in the first sentence of subsection (c) (3).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586k. Closing agreements.

The Mayor is authorized to enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Mayor within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact — the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, title XII, § 12; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Assessor” in the first sentence and “Mayor” for “Commissioner” in the second sentence.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586l. Compromises.

(a) *Authority to make.* — Whenever in the opinion of the Mayor there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Mayor may compromise such tax.

* * * * *

(c) *Of penalties and interest.* — The Mayor shall have the power for cause shown to compromise any penalty which may be imposed by the Mayor under the provisions of this subchapter. The Mayor may adjust any interest where, in his opinion, the facts in the case warrant such action.

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting “Mayor” for “Commissioner” twice in subsection (a) and once in the first sentence of subsection (c), and by substituting “Mayor” for

“Assessor” in the first and second sentences of subsection (c).

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1586n. Payment to Mayor and receipts.

The taxes provided under this subchapter shall be collected by the Mayor and the revenues derived therefrom shall be turned over to the Treasury of the United States for credit to the District in the same manner as other revenues are turned over to the United States Treasury for credit to the District. The Mayor shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XII, § 15; renumbered as § 16 by Act Oct. 31, 1969, Pub. L. 91-106, title VI, § 603(a), 83 Stat. 177; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Collector" in the first and second sentences.

Legislative History of Law 2-158. See note to § 47-1631.

Title XIII.—Penalties and Interest**§ 47-1589. Failure to file return.**

(a) *Failure to file return.* — In case of any failure to make and file a return required by this subchapter, within the time prescribed by law or prescribed by the Mayor or Council in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. With respect to declarations of estimated tax, for the purposes of this subsection, the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by deleting "or Assessor" following "Council" in the first sentence of subsection (a).

Legislative History of Law 2-158. See note to § 47-1631.

Section referred to in section. 47-3309.

§ 47-1589a. Interest on deficiencies.

(a) *Assessment and collection.* — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Mayor, and shall be collected as a part of the tax, at the rate of three-fourths of 1 per centum per month or portion of a month from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Collector" in subsection (a).

Legislative History of Law 2-158. See note to § 47-1631.

Title XIV.—Licenses

§ 47-1591. Requirement.

Trade, business, or professional license. — Every person, other than a corporation, who, as an individual, sole proprietor, partner, associate, or joint venturer shall, in the District of Columbia, engage in or conduct a trade, business, or profession, which is excluded from the imposition of the District of Columbia tax on unincorporated businesses under the definition set forth in section 47-1574, shall file with the Mayor prior to December 1st of the calendar year 1957, and prior to December 1st of each calendar year thereafter, an application for a trade, business, or professional license, accompanied by a license fee of \$25, which license, upon issuance, shall entitle such person to engage in or conduct a trade, business, or profession in the District of Columbia during the next ensuing calendar year: Provided, that no license shall be required under this subsection to be obtained by any individual or sole proprietor engaging in or conducting a trade, business, or profession in the District of Columbia whose annual gross receipts from such trade, business, or profession in the District of Columbia were, during the prior calendar year, less than \$12,000, and no partner, associate, or joint venturer shall be required to obtain a license where the annual gross receipts of the partnership, association, or joint venture in the District of Columbia were, during the prior calendar year, less than \$12,000: And provided further, that every person who, during any calendar year, commences as an individual, sole proprietor, partner, associate, or joint venturer, to engage in or conduct a trade, business, or profession in the District of Columbia without having so engaged in the prior calendar year, shall, within fifteen days after the date in said commencement year on which such trade, business, or profession attains gross receipts of \$12,000, make application to the Mayor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession was commenced, and any person who, during the prior calendar year, although engaged in a trade, business, or profession, did not attain gross receipts of \$12,000, shall, within fifteen days after the date within the calendar year on which such trade, business, or profession attains gross receipts of \$12,000, make application to the Mayor, accompanied by a license fee of \$25, for the license required by this subsection for the calendar year during which the trade, business, or profession, attained gross receipts of \$12,000.

No license shall be required (1) of any registered nurse or practical nurse for the purpose of engaging in or conducting a trade, business, or profession of registered nurse or practical nurse in the District of Columbia, (2) of any person licensed under section 35-425, for the purpose of acting within the District of Columbia for any life insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance, or (3) of any person engaged in the ministry of healing by prayer or spiritual means alone and who is a member of a church or denomination whose tenets and teachings include the practice of such healing. No officer or employee of the Government of the United States, or the government of the District of Columbia, and no individual in private or public employment who is compensated for services performed by him as an employee for his employer shall, for such employment, be required to obtain a license and, in the case of a partnership, association, or joint venture, no license shall be required of any partner, associate, or joint venturer who does not himself engage in or conduct the trade, business, or professional activities of the partnership, association, or joint venture in the District of Columbia. The license required to be obtained under the provisions of this subsection shall be in addition to all other licenses, fees, and permits required by law. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIV, § 1; May 27, 1949, 63 Stat. 133, ch. 146, title IV, § 419; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 15; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 7; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(b)(1), 83 Stat. 179; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401 (f), 23 DCR 8749; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section, in the first paragraph, by substituting “Mayor”

for “Assessor” near the beginning of the paragraph and twice in the last proviso.

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1591d. Revocation.

The Mayor may, after hearing, revoke any license issued hereunder for failure of the licensee to file a return or corrected return within the time required by this subchapter, or to pay any installment of tax when due. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 5; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Commissioner."

Legislative History of Law 2-158. See note to § 47-1631.

§ 47-1591e. Renewal.

Licenses shall be renewed for the ensuing calendar year upon application as provided in section 47-1591. No license shall be issued or renewed if the taxpayer has failed or refused to pay any tax or installment thereof, or penalties or interest thereon, imposed by this subchapter: Provided, however, that, the Mayor, in his discretion, for cause shown, may, on such terms or conditions as he may determine or prescribe, waive the provisions of this section. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 6; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002.)

Effect of Amendment.

1979 — Act Mar. 6, 1979, D.C. Law 2-158, amended section by substituting "Mayor" for "Commissioner" in the proviso of the second sentence.

Legislative History of Law 2-158. See note to § 47-1631.

Title XV.—Appeal

§ 47-1593. Appeal to Superior Court of the District of Columbia.

Section referred to in section. 47-3309.

CHAPTER 16.—INHERITANCE AND ESTATE TAXES

Article III — General

Sec.

47-1631. Secrecy of returns.

Article III—General

§ 47-1631. Secrecy of returns.

(a) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner any particulars set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any such return desired for use in litigation in Court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the Court: Provided, however, that nothing contained in this section shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$3.50.

(b) The provisions of this section shall also be applicable to any federal, state, or local inheritance or estate tax returns or copies thereof and to any other federal, state, or local inheritance or estate tax information either submitted by the taxpayer or otherwise obtained.

(c) Notwithstanding the provisions of subsection (a), any tax returns or other tax information required by this chapter may be disclosed to a contractor to the extent necessary for the processing, storage, transmission, or reproduction of such returns and information or for the programming, maintenance, repair, testing, and procurement of equipment for purposes of tax administration. The provisions of subsections (a) and (d) of this section shall be applicable to all such contractors and former contractors and to their officers and employees and former officers and employees.

(d) Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or by imprisonment for not more than one year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Mar. 6, 1979, D.C. Law 2-158, § 3, 25 DCR 7002.)

Emergency Act Amendments. 1978—For temporary addition of section, see sec. 3 of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322); and sec. 3 of the Tax Return Confidentiality Second Emergency Act of 1978 (D.C. Act 2-332, Dec. 29, 1978, 25 DCR 7017).

Legislative History of Law 2-158. Law 2-158 was introduced in Council and assigned Bill No. 2-402, which

was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-328 and transmitted to both Houses of Congress for its review.

CHAPTER 20.—DOG TAX

Sec.

47-2001 to 47-2008. [Repealed.]

§§ 47-2001 to 47-2008. **Repealed.** Oct. 18, 1979, D.C. Law 3-30, § 14 (a), 26 DCR 765.

Legislative History of Law 3-30. See note to § 6-2401.

CHAPTER 23.—GENERAL LICENSE LAW

Cross references. For regulation and licensing of occupational therapists, see § 2-499 et seq. For certification and registration of accountants and accounting firms, see § 2-944 et seq.

Sec.

47-2305. Establishment of licensing periods by Mayor —
Prorating for late application.

§ 47-2301. **Licenses required for business or profession — Application — Transfer of license — Signing and sealing.**

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

§ 47-2305. **Establishment of licensing periods by Mayor — Prorating for late application.**

The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any license authorized under this act may be issued. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: Provided, that where the license fee is \$3 or less the fee shall not be prorated: And provided further, that no fee or

tax shall be prorated to an amount less than \$3. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 5; July 1, 1932, 47 Stat. 551, ch. 366; Oct. 26, 1977, D.C. Law 2-27, § 3, 24 DCR 3720; Apr. 18, 1978, D.C. Law 2-72, § 3, 24 DCR 7065.)

Effect of Amendment.

1978 — Act Apr. 18, 1978, D.C. Law 2-72, amended section by deleting “5” and inserting “3” in lieu thereof at both places it occurred.

Legislative History of Law 2-72. See note to § 1-257.

§ 47-2311. Massage establishments — Turkish, Russian, or medicated baths.

NOTES TO DECISIONS

This section provides adequate notice of proscribed conduct, so that judges and juries may fairly administer the law in accordance with the legislative intent. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

This section comports with the basic due process standards of definiteness and sufficiency of notice as to proscribed conduct. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

Usage of “massage” conveys meaning. — Since the term “massage” has a universally accepted definition in

society, the usage in this section of “massage” without further explication is sufficient to convey the meaning intended by the cross-sexual massage prohibition. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

Brevity of contact between persons of opposite sex does not affect illegality of that contact. *Deinlein v. District of Columbia* (D.C. 1978, 386 A.2d 296).

§ 47-2328. Classification of buildings containing living quarters for licenses — Fees — Buildings exempt from license requirement.

NOTES TO DECISIONS

Cited in *Hsu v. Thomas* (D.C. 1978, 387 A.2d 588).

§ 47-2331. Vehicles for hire — Hackers’ licenses — Identification tags on vehicles — Sightseeing vehicles for school children, occasional purposes — Ambulances, private vehicles for funeral purposes — Issuance of licenses — Payment of fees.

Section referred to in sections. 6-823, 40-103.

§ 47-2338. Guides.

NOTES TO DECISIONS

Section inapplicable to federal concessionaire. — The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating

to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia* (1977, 571 F.2d 651, 187 U.S. App. D.C. 217).

§ 47-2340. Dealers in dangerous weapons.

NOTES TO DECISIONS

Cited in *McIntosh v. Washington* (D.C. 1978, 395 A.2d 744).

CHAPTER 24.—SUPERIOR COURT, TAX DIVISION

§ 47-2403. Appeal from assessment — Hearing and decision.

NOTES TO DECISIONS

Cited in *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8).

§ 47-2404. Review by court — Decision of Superior Court, when final — Modification or reversal.

NOTES TO DECISIONS

Cited in *Trustees of Nineteenth St. Baptist Church v. District of Columbia* (D.C. 1978, 385 A.2d 8.)

CHAPTER 25.—MISCELLANEOUS PROVISIONS

§ 47-2501c. Annual Federal payment — Duties of Mayor and Council — Submittal of request to President.

Emergency Act Amendment.
1978 — For emergency request for payment pursuant to section, see sec. 2 of the Emergency Federal Payment

Request for FY 1980 Act (D.C. Act 2-308, Nov. 29, 1978, 25 DCR 5535).

CHAPTER 26.—GROSS SALES TAX

| | |
|--------------------------------------|--|
| Sec. | Sec. |
| 47-2602. Imposition of tax. | 47-2605.2. Action for collection of taxes. |
| 47-2605. Exemptions. | 47-2605.3. Rules and regulations. |
| 47-2605.1. Application of exemption. | 47-2615. Secrecy of returns — Reciprocity. |

§ 47-2601. Definitions.

Section referred to in sections. 45-1681, 46-2605.

§ 47-2602. Imposition of tax.

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as “retail sale” and “sale at retail” in this chapter). The rate of such tax shall be 5 percent of the gross receipts from the sale of or charges for such tangible personal property and services, except that —

* * * * *

(2) the rate of tax shall be 8 percent of the gross receipts from the sale of or charges for

—
(A) any room or rooms, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients;

* * * * *

(C) spirituous or malt liquors, beer and wine sold for consumption on the premises where sold; and

(D) rental or leasing of rental vehicles and utility trailers as defined in section 40-111;

* * * * *

(As amended Mar. 6, 1979, D.C. Law 2-157, § 6, 25 DCR 6995.)

Effect of Amendment.
1979 — Act Mar. 6, 1979, D.C. Law 2-157, amended section, in paragraph (2), by deleting “and” at the end of subparagraph (A), by adding “and” at the end of subparagraph (C) and by adding subparagraph (D).
Emergency Act Amendments.
1978 — For temporary amendment of section, see the Rental Vehicle Tax Reform Emergency Act of 1978 (D.C.

Act 2-264, Aug. 16, 1978, 25 DCR 2431); and sec. 6 of the Second Rental Vehicle Tax Reform Emergency Act of 1978 (D.C. Act 2-306, Nov. 27, 1978, 25 DCR 5529).
1979 — For temporary amendment of section, see sec. 6 of the First Rental Vehicle Tax Reform Emergency Act of 1979 (D.C. Act 3-11, Feb. 23, 1979, 25 DCR 8156).
Legislative History of Law 2-157. See note to § 40-111.

§ 47-2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

* * * * *

(t) Sales of food or drink as described in subsection 14. (2) (1) of section 47-2601 made by a residence for senior citizens to the residents and employees of such facility and to the bona fide guests of such residents: Provided, that the facility does not also make such sales to the general public. As used in this subsection, the term “residence for senior citizens” means any facility which rents or offers for rent rooms or dwelling units exclusively to persons who are sixty (60) years of age or older or who are blind, disabled, or handicapped: Provided, that at least eighty percent (80%) of the residents of such facility must be sixty (60) years of age or older.
(As amended Mar. 3, 1979, D.C. Law 2-145, § 2, 25 DCR 6983.)

Effect of Amendment.
1979 — Act Mar. 3, 1979, D.C. Law 2-145, amended section by adding paragraph (t).
Emergency Act Amendments.
1978 — For temporary amendment of section, see sec. 2 of the Senior Citizens Residences Sales Tax on Meals Exemption Emergency Act of 1978 (D.C. Act 2-302, Nov. 27, 1978, 25 DCR 5477).
1979 — For temporary addition of paragraph (t), see sec. 2 of the Senior Citizen Residences Sales Tax on Meals Exemption Emergency Act of 1979 (D.C. Act 3-9, Feb. 23, 1979, 25 DCR 8037).

Legislative History of Law 2-145. Law 2-145 was introduced in Council and assigned Bill No. 2-337, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-321 and transmitted to both Houses of Congress for its review.
Section referred to in sections. 47-2605.1, 47-2605.2.

§ 47-2605.1. Application of exemption.

The exemption provided for in section 47-2605 (t) shall apply to sales made on or after January 1, 1978. Any tax collected by the District of Columbia from a vendor on such exempt sales and any reimbursements collected by a vendor from purchasers on such exempt sales shall be refunded in accordance with section 47-2617: Provided, that no interest shall be allowed or paid on any amount refunded pursuant to this section. (Mar. 3, 1979, D.C. Law 2-145, § 3, 25 DCR 6983.)

Legislative History of Law 2-145. See note to § 47-2605.
Short title. The first section of Act Mar. 3, 1979, D.C. Law 2-145, provided: “That this act may be cited as the

‘Senior Citizen Residences Sales Tax on Meals Exemption Act.’ ”
Section referred to in section. 47-2605.3.

§ 47-2605.2. Action for collection of taxes.

No administrative or civil action for the collection by the District of Columbia from a vendor of taxes (or penalties and interest thereon) due and payable on sales made prior to January 1, 1978, which would have been exempt sales under section 47-2605 (t) if such sales had been made on or after January 1, 1978, shall be commenced after the effective date of this section. Any such administrative or civil action that was commenced on or after January 1, 1978, shall be terminated, and any taxes, penalties, and interest collected from a vendor pursuant to any such administrative or civil action commenced on or after January 1, 1978, shall be refunded in accordance with section 47-2617, notwithstanding the limitation in such section on refunds of taxes finally determined as due under section 47-2616: Provided, that no interest shall be allowed or paid on any amount refunded pursuant to this section. (Mar. 3, 1979, D.C. Law 2-145, § 4, 25 DCR 6983.)

Legislative History of Law 2-145. See note to § 47-2605.

Section referred to in section. 47-2605.3.

§ 47-2605.3. Rules and regulations.

The Mayor is authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of sections 47-2605.1 and 47-2605.2. (Mar. 3, 1979, D.C. Law 2-145, § 5, 25 DCR 6983.)

Legislative History of Law 2-145. See note to § 47-2605.

§ 47-2609. Tax a preferred claim — Priority over property taxes.**NOTES TO DECISIONS**

Cited in District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land in Squares (1978, 589 F.2d 628, 191 U.S. App. D.C. 105).

§ 47-2615. Secrecy of returns — Reciprocity.

(a) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of gross proceeds or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: Provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer a copy of his return upon the payment of a fee of \$3.50.

* * * * *

(As amended Mar. 16, 1978, D.C. Law 2-57, § 4, 24 DCR 5426.)

Effect of Amendment.

1978 — Act Mar. 16, 1978, D.C. Law 2-57, amended section by deleting the figure “\$ 2.” in the last sentence of subsection (a) and inserting in lieu thereof the figure “\$ 3.50.”

Legislative History of Law 2-57. See note to § 47-306.

Section referred to in section. 47-3105.

§ 47-2616. Determination of deficiencies.

Section referred to in sections. 47-2605.2, 47-3105.

§ 47-2617. Refunds.

Section referred to in sections. 47-2605.1, 47-2605.2, 47-3105.

§ 47-2618. Appeals.

Section referred to in section. 47-3105.

§ 47-2619. Sales in bulk.

Section referred to in section. 47-3105.

§ 47-2621. Additional powers.

Section referred to in section. 47-3105.

§ 47-2622. Examination of records and witnesses.

Section referred to in section. 47-3105.

§ 47-2623. Certificate of registration.

Section referred to in section. 47-3105.

§ 47-2624. Penalties and interest.

Section referred to in section. 47-3105.

§ 47-2625. Failure to file return.

Section referred to in section. 47-3105.

§ 47-2626. Assessment of deficiencies — Limitations thereupon.

Section referred to in section. 47-3105.

§ 47-2627. Prosecutions.

Section referred to in section. 47-3105.

§ 47-2628. Notices — How given.

Section referred to in section. 47-3105.

§ 47-2629. Extensions of time.

Section referred to in section. 47-3105.

CHAPTER 28.—CIGARETTE TAX

Sec.

47-2809. Personnel and expenses authorized.

§ 47-2809. Personnel and expenses authorized.

The Commission is authorized to employ personal services, and to incur such other expenses as may be necessary to carry out the provisions of this chapter and to include such amounts in his annual estimates. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 610; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a); Mar. 3, 1979, D.C. Law 2-139, § 3205 (r), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by deleting “in accordance with chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]” following “services.”

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

CHAPTER 29.—ADMISSION TO LICENSED PLACES—POSTING OF PRICE SCALE**§ 47-2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color — Penalty.****NOTES TO DECISIONS**

Intent of section. — This section was directed solely at remedying racial discrimination in the District of Columbia. *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707).

This section does not mandate nondiscriminatory treatment based on age. *D.T. Corp. v. District of Columbia*

Alcoholic Beverage Control Bd. (D.C. 1979, 407 A.2d 707).

And it cannot be construed as requiring equal services to minors. *D.T. Corp. v. District of Columbia Alcoholic Beverage Control Bd.* (D.C. 1979, 407 A.2d 707).

CHAPTER 31.—HOTEL OCCUPANCY TAX

| Subchapter I.—In General | | Sec. |
|--|--------------------------------|---|
| Sec. | | 47-3108. Contents of annual revenue data estimates and projections. |
| 47-3101. Definitions. | | 47-3109. Analysis of revenue and cost data and recommendations. |
| 47-3102. Imposition and rate of tax. | | 47-3110. Adoption of tax and rate structures. |
| 47-3103. Exemptions. | | 47-3111. Limit on expenditures for civic center. |
| 47-3104. Returns and payment of tax. | | 47-3112. Jobs. |
| 47-3105. Incorporation of certain existing D.C. Code sections. | | |
| 47-3106. Regulations. | | Subchapter III.—Effective Dates |
| | Subchapter II.—Mayor's Reports | 47-3113. Effective date of subchapter I. |
| 47-3107. Required—Contents generally. | | |

Subchapter I.—In General

§ 47-3101. Definitions.

- For the purposes of this chapter:
- (a) The term “person” means any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals or of the foregoing.
 - (b) The term “operator” means any person operating a hotel in the District of Columbia, including, but not limited to, an owner or proprietor of such premises, or a lessee, sublessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel.
 - (c) The term “occupant” means any person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use, or other agreement.
 - (d) The term “occupancy” means the use or possession, or the right to the use or possession, by any person of any room or rooms in a hotel.
 - (e) The term “hotel” means any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to persons other than permanent residents.
 - (f) The term “room” means any room of any kind, other than a bathroom or lavatory, in any part or portion of a hotel, which use or possession is available for or let out for any purpose other than as a place of assembly.
 - (g) The term “rent” means the consideration received by an operator for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.
 - (h) The term “permanent resident of a hotel” means any occupant of a room or rooms in a hotel for ninety (90) consecutive days or more.
 - (i) The term “place of assembly” means any room rented by the operator or used by the operator exclusively for dining, meetings, dances, entertainment, exhibitions, and the like. This term does not include any room or suites of rooms which are also customarily used or rented for sleeping accommodations.
 - (j) The term “Mayor” means the Mayor of the District of Columbia as established under section 1-161, or his duly authorized representative.
 - (k) The term “District” means the District of Columbia.
- (Mar. 16, 1978, D.C. Law 2-58, § 101, 24 DCR 5765.)

Legislative History of Law 2-58. Law 2-58 was introduced in Council and assigned Bill No. 2-169, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively.

Signed by the Mayor on December 30, 1977, it was assigned Act No. 2-127 and transmitted to both Houses of Congress for its review.

Short title. The first section of act March 16, 1978, D.C. Law 2-58, 24 DCR 5765, provided “That this act may be

cited as the 'Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977.' "

§ 47-3102. Imposition and rate of tax.

(a) There is hereby imposed and there shall be paid a tax at the rate of eighty cents (80¢) for every occupancy of each room (irrespective of the number of occupants in each room) in a hotel in the District of Columbia. The tax shall apply to each occupancy of a room each time a daily rate or less than a daily rate is charged for such occupancy. If the rate charged for the occupancy is more than for a daily period, the tax shall apply to each room for each day of occupancy during such period.

(b) The tax hereby imposed is in addition to any other taxes imposed on the sale or charges for such rooms or occupancy, and shall be separately stated from all other charges or taxes.

(c) The tax hereby imposed shall be collected from the occupant by the operator and held by the operator in trust for the District of Columbia. The operator shall be liable for payment of the tax to the District of Columbia whether or not he or she has collected such tax from the occupant. The operator, and each and every officer of any corporate operator, shall be personally liable for the tax collected or required to be collected under this subchapter. The operator shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of nonpayment of rent by the occupant.

(d) Where the occupant has failed to pay and the operator has failed to collect the tax imposed by this subchapter, then in addition to all other rights, obligations and remedies provided in this chapter, such tax shall be payable by the occupant directly to the District, and it shall be the duty of the occupant to file a return thereof with the District and to pay the tax imposed by this subchapter. (Mar. 16, 1978, D.C. Law 2-58, § 102, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3103. Exemptions.

The tax imposed by this subchapter shall not apply to occupancy by:

(a) permanent residents of a hotel;

(b) the United States government or any of its instrumentalities when payments for the occupancy are made directly to the operator by the United States government or its instrumentalities;

(c) the District of Columbia government or any of its instrumentalities when payments for the occupancy are made directly to the operator by the District of Columbia government or its instrumentalities; and

(d) members of the foreign diplomatic corps who possess and display to the operator a valid and current exemption card issued to them by the Department of State of the United States. (Mar. 16, 1978, D.C. Law 2-58, § 103, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3104. Returns and payment of tax.

(a) Every operator or any other person liable for the tax imposed by this subchapter shall file a return for each calendar month on or before the twentieth (20th) day of the month immediately succeeding such calendar month or at such other times and for such other periods as the Mayor may prescribe. The return shall be in such form and contain such information as the Mayor may prescribe.

(b) At the time of filing the return as provided by this title, the operator or any other person liable for tax under this subchapter, shall pay to the District the taxes imposed by this subchapter. The taxes for the period for which a return is required to be filed, by an operator or any other person liable for tax under this subchapter, shall be due from the operator or such other person, and payable to the District on the date prescribed for the filing of the return for such period, without regard to whether a return is filed. (Mar. 16, 1978, D.C. Law 2-58, § 104, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3105. Incorporation of certain existing D.C. Code sections.

The provisions of sections 47-2615, 47-2616, 47-2617, 47-2618, 47-2619, 47-2621, 47-2622, 47-2623, 47-2624, 47-2625, 47-2626, 47-2627, 47-2628, and 47-2629, are hereby incorporated in and made a part of this subchapter. For the purposes of this subchapter, wherever the word “vendors” appears in the aforementioned sections, it shall include operators and any other person liable for tax under this subchapter, and wherever the word “Assessor” appears it shall be deemed to mean the Mayor. (Mar. 16, 1978, Law 2-58, § 105, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3106. Regulations.

The Mayor is hereby authorized to promulgate regulations implementing this subchapter. (Mar. 16, 1978, Law 2-58, § 106, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Subchapter II.—Mayor’s Reports

§ 47-3107. Required — Contents generally.

The Mayor shall report to the Council each year, on or before the date he or she submits to the Council a budget as required under section 47-221, on the detailed and total annual costs and revenues associated with the civic center. Such report shall include cost and revenue data beginning with the first year the costs were incurred in planning, constructing, or operating a civic center and ending with cost and revenue data in the most recent time period for which data are available. Each report shall also include cost and revenue projections for five (5) years in the future from the date each report is submitted. (Mar. 16, 1978, D.C. Law 2-58, § 301, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Section referred to in sections. 47-3108, 47-3109, 47-3112.

§ 47-3108. Contents of annual revenue data estimates and projections.

Annual revenue data estimates and projections, as required under section 47-3107, shall include, but not be limited to:

(a) direct, indirect, and induced revenues resulting from construction and operation of the civic center, including but not limited to revenues from the operation of the civic center, real property tax revenue increases, hotel occupancy tax revenues, retail sales tax revenue increases, income tax revenue increases, plus other revenues generated by the civic center, less taxes and other revenues generated by land, buildings, jobs and other sources from land uses which were replaced or displaced by the civic center and replaced or displaced by the indirect effects of the civic center (these revenues shall be listed in detail and all assumptions used in developing estimates and projections shall be clearly stated); and

(b) direct and indirect costs resulting from construction and operation of the civic center, including but not limited to start-up administrative costs, capital construction costs, capital improvements, direct and indirect operating costs, financing of capital costs, costs of additional city services required by the civic center, and other administrative and other costs.

(Mar. 16, 1978, D.C. Law 2-58, § 302, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3109. Analysis of revenue and cost data and recommendations.

As part of the report required by section 47-3107, the Mayor shall analyze the revenue and cost data required by section 47-3107. When necessary, the Mayor shall recommend to the Council tax and rate structure changes which would (a) terminate or reduce the hotel occupancy tax imposed by subchapter I of this chapter and/or terminate or reduce the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues exceed direct and indirect costs associated with construction and operation of the civic center, or (b) increase the hotel occupancy tax imposed by subchapter I of this chapter and/or increase the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues do not exceed the direct and indirect costs associated with the operation and construction of the civic center without such further tax rate increases. (Mar. 16, 1978, D.C. Law 2-58, § 303, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Section referred to in section. 47-3110.

§ 47-3110. Adoption of tax and rate structures.

The Council of the District of Columbia shall evaluate annually the recommendations proposed by the Mayor under section 47-3109, and adopt tax and rate structure changes which would terminate or reduce the hotel occupancy tax imposed by subchapter I of this chapter and/or (a) terminate or reduce the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues exceed direct and indirect costs associated with construction and operation of the civic center, or (b) increase the hotel occupancy tax imposed by subchapter I of this chapter and/or increase the corporate and unincorporated business surtax extended by sections 47-1571a and 47-1574b in the event that direct and indirect revenues do not exceed direct and indirect costs associated with operation and construction of the civic center without such further tax rate increases. (Mar. 16, 1978, D.C. Law 2-58, § 304, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3111. Limit on expenditures for civic center.

The District government may expend on civic center construction and operation, no more than fifty percent (50%) of the revenues received from the corporate and unincorporated business surtax enacted and extended under sections 47-1571a and 47-1574b. (Mar. 16, 1978, D.C. Law 2-58, § 305, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

§ 47-3112. Jobs.

At the same time the Mayor submits cost and revenue data as required by section 43-3107, the Mayor shall report to the Council of the District of Columbia on the total number of jobs, in person-years and in payroll dollars, created by the construction and operation of the civic center, and the portion of those jobs which are held by minorities, women, and District of Columbia residents. (Mar. 16, 1978, D.C. Law 2-58, § 306, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

Subchapter III.—Effective Dates

§ 47-3113. Effective date of subchapter I.

Subchapter I of this chapter shall become effective on May 1, 1978. (Mar. 16, 1978, D.C. Law 2-58, § 401, 24 DCR 5765.)

Legislative History of Law 2-58. See note to § 47-3101.

CHAPTER 32.—CONSUMER TRANSMISSION OF MONEY ACT

Sec.

- 47-3201. Definitions.
- 47-3202. License required.
- 47-3203. Exemptions.
- 47-3204. Qualifications.
- 47-3205. Applications.
- 47-3206. Accompanying fee, statements and bond.
- 47-3207. Granting of license; investigations.
- 47-3208. Maintenance of bond or securities.
- 47-3209. Annual license fee.

Sec.

- 47-3210. Agent.
- 47-3211. Liability of licensees.
- 47-3212. Disclosure of responsibility.
- 47-3213. Maximum charge.
- 47-3214. Revocation of license investigations.
- 47-3215. Hearings.
- 47-3216. Penalties.
- 47-3217. Severability.

§ 47-3201. Definitions.

For the purpose of this chapter:

(a) the term “check” means any check, draft, money order, personal money order or other instrument for the transmission or payment of money other than a traveler’s check.

(b) the term “deliver” means to transfer possession of a check to the first person who, in payment for same, makes or purports to make a remittance of or against the face amount thereof whether or not the deliveror also charges a fee in addition to the face amount and whether or not the deliveror signs the check.

(c) the term “licensee” means a person duly licensed by the Mayor under this chapter.

(d) the term “Mayor” means the Mayor of the District of Columbia or his designee.

(e) the term “person” means any individual, partnership, association, joint stock association, trust or corporation but does not include the United States government, the government of the District of Columbia or the United States Postal Service.

(f) the term “personal money order” means any instrument for the transmission or payment of money which is signed by the purchaser or remitter whether or not he appoints the seller of the money order as his agent for the receipt, transmission or handling of money and whether or not such instrument is also signed by some other person in addition to the purchaser or remitter.

(g) the term “sell” means to sell, to issue or to deliver a check.

(Oct. 4, 1978, D.C. Law 2-114, § 2, 25 DCR 1985.)

Legislative History of Law 2-114. Law 2-114 was introduced in Council and assigned Bill No. 2-210, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 21, 1978, it was

assigned Act No. 2-242 and transmitted to both Houses of Congress for its review.

Short title. The first section of act Oct. 4, 1978, D.C. Law 2-114, 25 DCR 1985, provided “That this act may be cited as the ‘District of Columbia Consumer Transmission of Money Act of 1978.’ ”

§ 47-3202. License required.

No person, except those specifically exempted in section 47-3203 or agents of a licensee as provided in section 47-3210, shall engage in the business of selling checks, as a service or for a fee or other consideration, in the District of Columbia without having first obtained a license

under the provisions of this chapter. Any person engaged in such business on the effective date of this chapter may continue to engage therein without a license until the Mayor has acted upon his application for a license: Except, that such application must be filed within sixty (60) days after the effective date of this chapter. (Oct. 4, 1978, D.C. Law 2-114, § 3, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3203. Exemptions.

This chapter does not apply to any of the following:

(a) Banks, credit unions, trust companies, building and loan associations and savings and loan associations organized under the laws of the United States or of the District of Columbia or authorized to do business in the District of Columbia and the United States Postal Service; and

(b) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph.

(Oct. 4, 1978, D.C. Law 2-114, § 4, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3202.

§ 47-3204. Qualifications.

To qualify for a license under this chapter, an applicant must meet the following requirements:

(a) The applicant must have a net worth of at least one hundred thousand dollars (\$100,000) computed according to generally accepted accounting principles.

(b) The financial responsibility, financial condition and business experience of the applicant must be such as to reasonably warrant the belief that applicant's business will be conducted honestly and carefully to the extent deemed advisable by the Mayor as set forth in section 47-3207.

(Oct. 4, 1978, D.C. Law 2-114, § 5, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3207.

§ 47-3205. Applications.

Each application for a license under this chapter shall be made in writing and under oath to the Mayor in such form as he may prescribe. The application shall state the full name and business address of:

- (1) the proprietor, if the applicant is an individual;
- (2) each member, if the applicant is a partnership or association;
- (3) each trustee or other officer, if the applicant is a trust; or
- (4) the corporation and each officer and director thereof, if the applicant is a corporation.

(Oct. 4, 1978, D.C. Law 2-114, § 6, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Compiler's change. The original act numbered the first paragraph as "(a)". Since there is no "(b)," the "(a)" has been deleted.

§ 47-3206. Accompanying fee, statements and bond.

(a) Each application for a license shall be accompanied by:

(1) an investigation fee of two hundred fifty dollars (\$250) which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;

(2) financial statements reasonably satisfactory to the Mayor; and

(3) a list of all locations, including agents and their addresses, where business is conducted in the District of Columbia;

(4) a surety bond issued by a bonding company or insurance company, authorized to do business in the District of Columbia, or other security as provided in subsection (b), in the principal sum of fifty thousand dollars (\$50,000). Each applicant shall submit proof of security to the Mayor prior to the issuance of the renewal license for any calendar year in the amounts provided herein. For a licensee with average total outstanding and unpaid checks for the previous year of not over fifty thousand dollars (\$50,000), the bond shall be fifty thousand dollars (\$50,000). For a licensee with average total outstanding and unpaid checks for the previous year in excess of fifty thousand dollars (\$50,000) but less than seventy-five thousand dollars (\$75,000), the bond shall be seventy-five thousand dollars (\$75,000). For a licensee with average total outstanding and unpaid checks for the previous license year in excess of seventy-five thousand dollars (\$75,000), the bond shall be one hundred thousand dollars (\$100,000). The bond shall be in a form satisfactory to the Mayor and shall run to the District of Columbia for the benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks in the District of Columbia. Such claimants, against the applicant or his agents, may themselves bring suit directly on the bond or the Corporation Counsel may bring suit thereon in behalf of such claimants either in one action or successive actions. The aggregate liability of the surety in no event shall exceed the principal sum of the bond: Except, that the surety shall have the right to cancel such bond, upon giving not less than thirty (30) days written notice to the Mayor, but such cancellation shall not release the surety from any liability that may arise with respect to obligations of the applicant outstanding on or prior to the day that such bond is canceled.

(b) In lieu of a corporate surety bond or bonds or of any portion of the principal thereof as required by subsection (a) (4), the applicant may deposit with the Mayor or with such banks or trust companies or national banks in the District of Columbia as such applicant may designate and the Mayor may approve a deposit in the nature of a cash bond, stocks, interest bearing bonds, notes, debentures, or other forms of security as may be determined by the Mayor in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The security shall be deposited as mentioned above and held to secure the same obligations as would the surety bond but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right, with the approval of the Mayor, to substitute other security for those deposited. (Oct. 4, 1978, D.C. Law 2-114, § 7, 25 DCR 1985; Dec. 21, 1979, D.C. Law 3-41, § 2 (a), (b), 26 DCR 2078.)

Effect of Amendment.

1979 — Act Dec. 21, 1979, D.C. Law 3-41, amended section, in subsection (a) (4), by inserting “or other security as provided in subsection (b)” in the first sentence, by substituting “submit proof of security to” for “annually file a similar bond with” in the second sentence, by combining the former last two sentences into the present last sentence and by deleting “The bond shall be without expiration date” preceding the exception clause in the last sentence, and in subsection (b), by deleting “of this section” following “(a) (4)” and “stocks or” following “interest bearing” in the first sentence, by inserting “a deposit in the nature of a cash bond, stocks” in the first sentence, and by substituting “forms of security as may be

determined by the Mayor” for “obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States or the District of Columbia” in the first sentence and “security” for “securities” twice in the last sentence.

Emergency Act Amendments.

1979 — For temporary amendment of section, see sec. 2 of the Emergency Amendments to the District of Columbia Consumer Transmission of Money Act of 1978 (D.C. Act 3-40, May 8, 1979, 25 DCR 10152); sec. 2 of the Second Emergency Amendments to the District of Columbia Consumer Transmission of Money Act of 1979 (D.C. Act 3-94, Aug. 27, 1979, 26 DCR 1007); and sec. 2 of the Third Emergency Amendments to the District of Columbia

Consumer Transmission of Money Act of 1978 (D.C. Act 3-129, Nov. 20, 1979, 26 DCR 2415).

Legislative History of Law 2-114. See note to § 47-3201.

Legislative History of Law 3-41. Law 3-41 was introduced in Council and assigned Bill No. 3-143, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and

second readings on September 25, 1979 and October 9, 1979, respectively. Signed by the Mayor on October 30, 1979, it was assigned Act No. 3-113 and transmitted to both Houses of Congress for its review.

Section referred to in section. 47-3208.

§ 47-3207. Granting of license; investigations.

(a) Upon the filing of an application in due form, including the required fee and accompanying documents, the Mayor shall issue to the applicant a license to engage in the selling of checks in the District of Columbia, unless the Mayor finds that the qualifications prescribed by subsection (b) of this section and by section 47-3204 have not been met.

(b) The financial responsibility, conditions and business experience of the applicant or licensee must be such as to warrant the belief that the applicant's business will be conducted honestly and carefully. The Mayor may investigate and consider the qualifications of the applicant or licensee (including the officers and directors of the applicant) in determining whether this qualification has been met. (Oct. 4, 1978, D.C. Law 2-114, § 8, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3204.

§ 47-3208. Maintenance of bond or securities.

After a license has been granted, the licensee shall maintain said bond or securities in the amount prescribed by section 47-3206 (a) (4) as follows:

(a) Each licensee shall file quarterly reports with the Mayor setting forth the locations at which he sells checks in the District of Columbia as of January 1, April 1, July 1 and October 1 of each year the report for each such date is due on, or before the fifteenth (15) day thereafter.

(b) If the Mayor shall at any time determine that the bond or securities aforesaid are insecure, deficient in amount, exhausted in whole or part or if the surety on the bond shall have notified the Mayor of its intention to cancel the bond, he shall, by written order, require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this chapter. Such order is to be complied with within thirty (30) days following service thereof upon the licensee. (Oct. 4, 1978, D.C. Law 2-114, § 9, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3209. Annual license fee.

The Mayor shall establish an annual license fee. (Oct. 4, 1978, D.C. Law 2-114, § 10, 25 DCR 1985; Dec. 21, 1979, D.C. Law 3-41, § 2 (c), 26 DCR 2078.)

Effect of Amendment.

1979 — Act Dec. 21, 1979, D.C. Law 3-41, amended section by rewriting the section.

Legislative History of Law 3-41. See note to § 47-3206.

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3210. Agent.

A licensee may conduct his business at one (1) or more locations within the District of Columbia and through or by means of such agents as the licensee may from time to time designate or appoint. No license under this chapter shall be required of any agent of a licensee. (Oct. 4, 1978, D.C. Law 2-114, § 11, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

Section referred to in section. 47-3202.

§ 47-3211. Liability of licensees.

Each licensee shall be liable for the payment of all checks which he sells in the District of Columbia, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the laws governing negotiable instruments in the District of Columbia. A licensee who sells a check, whether directly or through an agent, upon which he is not designated as the maker or drawer, shall nevertheless have the same liabilities with respect thereto as if he had signed the same as the drawer thereof. (Oct. 4, 1978, D.C. Law 2-114, § 12, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3212. Disclosure of responsibility.

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon. (Oct. 4, 1978, D.C. Law 2-114, § 13, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3213. Maximum charge.

No licensee or his agent shall charge a fee for selling or cashing checks in excess of one (1%) percent of the face amount thereof or fifty cents (\$0.50), whichever is greater. (Oct. 4, 1978, D.C. Law 2-114, § 14, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3214. Revocation of license investigations.

The Mayor may revoke a license on the same grounds on which he may refuse to grant a license or for violation of any provision of this chapter. In furtherance of the foregoing, the Mayor, if he has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books and records of the licensee. (Oct. 4, 1978, D.C. Law 2-114, § 15, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3215. Hearings.

No license shall be denied, suspended or revoked except after notice and an opportunity to be heard. Hearings under this section shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1509). (Oct. 4, 1978, D.C. Law 2-114, § 16, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3216. Penalties.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both. Prosecutions shall be made by the Corporation Counsel in the Superior Court of the District of Columbia. (Oct. 4, 1978, D.C. Law 2-114, § 17, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

§ 47-3217. Severability.

The provisions of this chapter are severable and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections

or parts of the chapter or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, unconstitutional or applicable provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the chapter or any part is inapplicable had been specifically exempted. (Oct. 4, 1978, D.C. Law 2-114, § 18, 25 DCR 1985.)

Legislative History of Law 2-114. See note to § 47-3201.

CHAPTER 33.—RESIDENTIAL REAL PROPERTY TRANSFER EXCISE TAX

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Subchapter I.—Definitions

§ 47-3301. Definitions.

For the purposes of this chapter, unless otherwise indicated:

(a) The term "basis" shall have the same meaning as does that term when determining gain or loss under subtitle A, chapter 1, subchapter O, part II of the Internal Revenue Code (26 U.S.C. § 1 et seq.).

(b) The term "Charter" means title IV of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, sec. 1-124).

(c) The term "Commission" means the Real Estate Commission of the District of Columbia as established in section 45-1403.

(d) The term "consideration" means the amount paid or required to be paid, or the value exchanged or required to be exchanged by a transferee to acquire residential real property.

(e) The term "Council" means the Council of the District of Columbia established under section 1-141.

(f) The term "dealer in residential real property" and the term "dealer" means any person who transfers three (3) or more residential real properties within a period of thirty (30) months. The following transfers of residential real property (as defined by this subchapter) shall not be considered for the purpose of determining whether the transferor is a dealer:

(1) transfers prior to the effective date;

(2) transfers of a transferor's principal residence (as defined by this subchapter);

(3) transfers to or by a District of Columbia nonprofit organization which is organized and operated for the purpose of constructing, improving, or renovating residential real property: Provided, that such organization is exempt from federal income taxation under section 501 (a) (26 U.S.C. § 501(a)) and is described in section 501 (c) (3) (26 U.S.C. § 501 (c) (3)) of the Internal Revenue Code. Transfers by such organization must be made in furtherance of the organization's exempt purpose;

(4) transfers to or by the federal government or the government of the District of Columbia, their agencies and instrumentalities, and the first transfer after the transfer by said governments: Provided, that said first transfer after the transfer by said governments is governed by laws and regulations pertaining to a housing or community development program administered by the District or federal government;

(5) transfers in which the transferee neither gives nor is required to give any consideration in any form (including transfers by gift, deeds of correction, deeds which merely change tenancy, and deeds of trust): Provided, that the basis of the property in the hands of the transferee shall be the same as it was in the hands of the transferor;

(6) transfers where the property being transferred was received by the transferor without giving or being required to give any consideration in any form: Provided, that the transferor shall prove by clear and convincing evidence, upon all the facts and circumstances, that the transfer in which the transferor received the property was not made for the purpose of excluding the instant transfer from consideration in determining if the transferor is a dealer (as defined by this subsection). It shall be presumed that the transfer in which the transferor received the property without consideration was made for the purpose of excluding the instant transfer from consideration in determining whether the transferor is a dealer. The transferor must include sufficient information on the return, filed pursuant to section 47-3306, to rebut said presumption. The regulations prescribed by the Mayor shall set forth the information which will be deemed sufficient to rebut said presumption;

(7) transfers by devise, or as a result of intestate succession;

(8) transfers where the property being transferred was received by the transferor by devise or as a result of intestate succession;

(9) transfers executed by persons in their capacity as court-appointed receivers, referees, administrators, executors, conservators, guardians of the estates of minors, and committees of the estates of persons judicially determined to be mentally incompetent;

(10) the first transfer of property, the construction of which was completed after the effective date (as defined by this subchapter) regardless of when the construction began. The construction of property shall be considered complete at the time such construction is completed to the same extent required for the issuance of a certificate of occupancy, as that term is used in section 5-422. This paragraph applies only to newly-constructed structures and not to rehabilitated structures;

(11) foreclosure sales, and the first transfer thereafter if said first transfer is made by the mortgagee who instituted the foreclosure proceedings and purchased the property at the foreclosure sale, or obtained title directly from the defaulting party without a foreclosure sale: Provided, that said mortgagee is licensed in the District of Columbia as a bank or other financial institution;

(12) deeds of release of property where the property was security for a debt or other obligation; and

(13) transfers by a transferor whose holding period (as defined by this subchapter) for the property being transferred was longer than thirty-six (36) months.

(g) The term "deed recordation tax" means the tax imposed by section 45-723.

(h) The term "deficiency" shall have the same meaning given to that term by section 47-1551c (q).

(i) The term "effective date" means the date on which this chapter takes effect according to the provisions of section 1-147 (c) (1).

(j) The term “equitable title” means a right in a party to have the legal title to a residential real property (or real property, solely for purposes of subchapter III of this chapter) transferred to such party. The term shall also include any right to receive equitable title by means of an option to purchase or otherwise.

(k) The term “gain” means the excess of the consideration received by a transferor over the transferor’s basis for the property (as defined by this subchapter) transferred.

(l) The term “fair market value” means the price at which a willing seller and a willing buyer will trade or the price which would in all probability have been arrived at between a willing seller and a willing buyer.

(m) The term “holding period” shall have the same meaning as does that term for purposes of section 1223 of the Internal Revenue Code (26 U.S.C. § 1223).

(n) The term “Internal Revenue Code” means the Internal Revenue Code of 1954 (26 U.S.C. § 1 et seq.) and any amendments thereto.

(o) The term “legal holiday” means any District of Columbia public holiday, including Saturday and Sunday, as designated by section 28-2701.

(p) The term “legal title” means complete and perfect title to residential real property (or real property, solely for purposes of subchapter III of this chapter) in the party to whom such title belongs so far as regards the apparent right of ownership and possession of the residential real property (or real property, solely for purposes of subchapter III of this chapter) but which carries no beneficial interest in the property, another person being equitably entitled thereto.

(q) The term “major appliances” shall include the following appliances if a transferor transfers such appliances when transferring residential real property: refrigerator, cooking range, oven, dishwasher, garbage disposal, trash compactor, and washer and dryer.

(r) The term “Mayor” means the Mayor of the District of Columbia established under section 1-161.

(s) The term “person” means any individual, firm, partnership, copartnership, joint venture, association, corporation (domestic or foreign), trust, trustee of any estate, or court appointed receiver.

(t) The term “principal residence” shall have the same meaning as does that term for purposes of section 1034 of the Internal Revenue Code (26 U.S.C. § 1034): Except, that in determining whether a residential real property is the principal residence of a transferor, in addition to consideration of all the facts and circumstances as provided by section 1034 of the Internal Revenue Code (26 U.S.C. § 1034), the property must have been the principal residence of the transferor for the one hundred and eighty (180) day period immediately preceding the transfer.

(u) The term “real covenant” means an agreement between two (2) or more persons relating to a property, the terms of which shall be binding on any heir or assign of the promisor under the agreement and which shall be enforceable by the person holding legal title to said property.

(v) The term “real property” means improved as well as unimproved land in the District of Columbia.

(w) The term “residential real property” or “property” means improved real property in the District of Columbia which at any time during the twelve (12) months immediately preceding its transfer contained not more than four (4) dwelling units. The term “dwelling unit” shall have the same meaning as given to that term in the Zoning Regulations of the District of Columbia (chapter I, article 12, section 1202, page 5, as amended through May 11, 1977).

(x) The term “solicitation” means any act which would cause a person to come within the definition of solicitor of residential real property.

(y) The term “solicitor of residential real property” means a person who, without prior invitation from the holder of legal title to a residential real property, offers to purchase or expresses a desire to purchase such property, or in any other way attempts to persuade or induce such holder to sell or otherwise transfer such title.

(z) The term “tax”, “excise” or “excise tax” means the tax imposed by this chapter.

(aa) The term “third party” means all persons who are not parties to a contract, agreement, or instrument of writing by which their interest in the thing conveyed is sought to be effected.

(bb) The term “transfer” means a transaction by which residential real property (or real property, solely for purposes of subchapter III of this chapter), or any title or right to receive any title thereto, or any portion thereof, or any interest therein (except a proprietary lease and a rental lease, unless such rental lease includes an option or right to buy) is either directly or indirectly conveyed, vested, granted, devised, bargained, sold, exchanged or assigned by any document, instrument, writing, agreement, or by any means whatsoever.

(cc) The term “transferee” means the person (or persons) to whom a transfer of residential real property (or real property, solely for purposes of subchapter III of this chapter) is made.

(dd) The term “transferor” means the person (or persons) who makes a transfer of residential real property (or real property, solely for purposes of subchapter III of this chapter).

(ee) The term “vacant” means not occupied by the person having legal title or other title to the property and without other lawful occupants.

(July 13, 1978, D.C. Law 2-91, § 101, 24 DCR 9765.)

Emergency Act Amendment.

1978 — For temporary enactment of chapter, see the Home Purchase Assistance Fund Emergency Authorization Act of 1978 (D.C. Act 2-213, July 1, 1978, 25 DCR 1972).

Legislative History of Law 2-91. Law 2-91 was introduced in Council and assigned Bill No. 2-101, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, second amended first reading, and second readings on February

21, 1978, March 7, 1978, March 21, 1978 and April 4, 1978, respectively. Signed by the Mayor on April 27, 1978, it was assigned Act No. 2-189 and transmitted to both Houses of Congress for its review.

Short title. The first section of the act of July 13, 1978, D.C. Law 2-91, 24 DCR 9765, provided “That this act may be cited as the ‘Residential Real Property Transfer Excise Tax Act of 1978.’ ”

Section referred to in sections. 45-723, 47-3304.

Subchapter II.—Residential Real Property Transfer Excise Tax

§ 47-3302. Imposition of excise tax.

(a) Except as provided under subsections (b) and (d) of this section and section 47-3303, there is hereby imposed, in addition to all other taxes, an excise tax on the transfer of residential real property. The transferor shall be liable for payment of the excise.

(b) If a transferor transfers both equitable title and legal title to a residential real property, then the tax imposed in subsection (a) of this section shall apply only to the transfer of the legal title to the property.

(c) Where two (2) or more transferors jointly transfer property, each transferor shall be jointly and severally liable for the excise tax imposed in subsection (a).

(d) The tax imposed by subsection (a) of this section shall be applied only during the three (3) year period after the effective date. (July 13, 1978, D.C. Law 2-91, § 201, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 47-3303, 47-3307.

§ 47-3303. Exempt transfers.

The following transfers of property are exempt from the excise tax imposed by this subchapter:

(a)(1) transfers of property which the transferor warrants in writing that the property is fit for occupancy and use and against defective structure, materials and workmanship for a period of two (2) years from the date of the transfer. Said two (2) year warranty shall apply to the cost of labor, materials, and any related costs for at least the following: roof; guttering and downspout; heating system (including furnace); electrical system; plumbing system; hot water heater and tank; dry basement and air-conditioning system;

(2) transfers of property which the transferor warrants in writing that the major appliances, as defined in subchapter I of this chapter, transferred with the property are fit for the purpose for which they were made and against defective materials and workmanship, for a period of one (1) year from the date of the transfer, not to exceed the period of coverage of

any manufacturer's warranty on any major appliance. Said one (1) year warranty shall apply to the cost of labor, materials and any related costs for such appliances. The warranties set forth in paragraphs (1) and (2) of this subsection shall be real covenants during the period of their duration and shall not include the cost of labor, materials, and any related costs for damage intentionally or negligently caused by the transferee nor shall they include maintenance work resulting from normal wear and tear; and

(3) transfers of property which are certified by a District of Columbia agency designated by the Mayor that the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia as of the date of the transfer. A transferor claiming an exemption under this subsection shall submit a written request to the agency designated by the Mayor requesting an inspection of the property. Such agency shall within twenty (20) calendar days after receipt of such request, issue in writing a statement setting forth the street address and the lot and square number of the property inspected, the date of inspection, the name of the inspector and whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia. If such agency, after inspection, determines that the property does not meet the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia, the statement issued by the agency shall set forth the reasons for such determination;

(4) if such agency fails within said twenty (20) calendar day period to complete the inspection and issue a written statement, as set forth in paragraph (3), indicating whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia, then in lieu thereof the transferor may under the following preconditions certify that the property meets said articles of the Housing Regulations of the District of Columbia:

(A) a person selected by or approved in writing by the transferee inspects the property;

(B) that the person selected is a professional engineer (i.e., electrical, structural, mechanical, or civil) or a contractor licensed by the District of Columbia government;

(C) the person inspecting the property states in writing, item by item, whether the property meets the standards required by the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia;

(D) such inspector's written itemized statement is provided to the transferor and a copy provided to the transferee; and

(E) any costs incurred for the inspection are borne by the transferor only.

Within thirty (30) days from the effective date, the Mayor shall develop such forms and procedures as are necessary to carry out the provisions of this subsection. The warranties set forth in paragraphs (1) and (2) of this subsection and the certification set forth in paragraphs (3) and (4) of this subsection, whichever is applicable, shall be executed only on the forms developed by the Mayor, and shall be executed under oath and fully acknowledged. The transferor giving the warranties set forth in this subsection shall provide a copy to the transferee and file a copy with the Mayor in a manner prescribed by the Mayor. A copy of the certification as provided by paragraphs (3) and (4) of this subsection, whichever is applicable, shall be provided to the transferor and the transferee and a copy shall be filed with the Mayor in a manner prescribed by the Mayor. The warranties and certification filed with the Mayor shall be listed on a public record determined by the Mayor;

(b) transfers of a transferor's principal residence;

(c) transfers by an employee of the United States government whose principal residence is outside of the Washington, D.C. Standard Metropolitan Statistical Area: Provided, that the transferor resided in the property for the six (6) month period immediately preceding the transfer;

(d) the first transfer, during the first six (6) months after the effective date, of residential real property which was vacant on or before July 1, 1977 and which has been vacant since that date;

(e) transfers to or by the federal government or the government of the District of Columbia, their agencies and instrumentalities, and the first transfer after the transfer by said governments: Provided, that said first transfer after the transfer by said governments is governed by laws and regulations pertaining to a housing or community development program administered by the District or federal government;

(f) transfers to or by a District of Columbia nonprofit organization which is organized and operated for the purpose of constructing, improving, or renovating residential real property: Provided, that such organization is exempt from federal income taxation under section 501 (a) (26 U.S.C. § 501 (a)) and is described in section 501 (c) (3) (26 U.S.C. § 501 (c) (3)) of the Internal Revenue Code. Transfers by such organization must be made in furtherance of the organization's exempt purpose;

(g) transfers in which the transferee neither gives nor is required to give any consideration, in any form (including transfers by gift, deeds of correction, deeds which merely change tenancy, and deeds of trust): Provided, that the basis of the property in the hands of the transferee shall be the same as it was in the hands of the transferor;

(h) the first transfer of property, the construction of which was completed after the effective date, regardless of when construction began. The construction of property shall be considered complete at the time such construction is completed to the same extent required for the issuance of a certificate of occupancy, as that term is used in section 5-422. This subsection shall apply only to newly constructed structures and not to rehabilitated structures;

(i) foreclosure sales, and the first transfer thereafter if said first transfer is made by the mortgagee who instituted the foreclosure proceedings and purchased the property at the foreclosure sale, or obtained title directly from the defaulting party without a foreclosure sale: Provided, that said mortgagee is licensed in the District of Columbia as a bank or other financial institution;

(j) deeds of release of property where the property was security for a debt or other obligation;

(k) transfers by devise, or as a result of intestate succession;

(l) transfers where the property being transferred was received by devise or as a result of intestate succession;

(m) transfers executed by persons in their capacity as court-appointed receivers, referees, administrators, executors, conservators, guardians of the estates of minors, and committees of the estates of persons judicially determined to be mentally incompetent;

(n) transfers pursuant to a valid and binding separation agreement and by court order pursuant to a separation or divorce decree;

(o) transfers by involuntary conversion as defined in section 1033 of the Internal Revenue Code (26 U.S.C. § 1033); and

(p)(1) transfers of residential real property in exchange solely for residential real property of a like kind (as defined in section 1031 of the Internal Revenue Code (26 U.S.C. § 1031)): Provided, that each party to such exchange shall keep the same basis in the property received as that party had in the property transferred.

(2) If an exchange would be exempt under paragraph (1) of this subsection if it were not for the fact that the exchange consisted not only of property of a like kind but also of money or other consideration, then the exchange shall be taxable under section 47-3302. Each party to the exchange shall be treated as a transferor of the property exchanged by that party. The consideration received by each transferor shall be the fair market value of the property received plus the amount of any money or other consideration received. Each transferor shall have a basis in the property received equal to the fair market value of the property exchanged by that transferor plus any money or other consideration given by that transferor and minus any money or other consideration received by that transferor.

(July 13, 1978, D.C. Law 2-91, § 202, 24 DCR 9765.)

§ 47-3304. Determination of excise tax.

The excise imposed by this subchapter is determined as follows:

- (a) compute the transferor's gain as defined in section 47-3301;
- (b) compute the percentage of gain by expressing gain as a percentage of basis;
- (c) determine the applicable tax rate by matching the percentage of gain with the appropriate holding period in the table in section 47-3305;
- (d) determine the tax liability by multiplying the applicable tax rate by the transferor's gain.

(July 13, 1978, D.C. Law 2-91, § 203, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3305. Excise tax table.

| TAX SCHEDULE | | | | | | |
|---|-----|------|-------|-------|-------|-------|
| Holding Period (in months or fractions thereof) | | | | | | |
| Remainder as percentage of prior consideration | 0-6 | 7-12 | 13-18 | 19-24 | 25-30 | 31-36 |
| 11 | 10 | 0% | 0% | 0% | 0% | 0% |
| 12 | 17 | 0 | 0 | 0 | 0 | 0 |
| 13 | 24 | 0 | 0 | 0 | 0 | 0 |
| 14 | 29 | 0 | 0 | 0 | 0 | 0 |
| 15 | 34 | 0 | 0 | 0 | 0 | 0 |
| 16 | 38 | 5 | 0 | 0 | 0 | 0 |
| 17 | 42 | 18 | 0 | 0 | 0 | 0 |
| 18 | 45 | 22 | 0 | 0 | 0 | 0 |
| 19 | 48 | 26 | 0 | 0 | 0 | 0 |
| 20 | 50 | 30 | 0 | 0 | 0 | 0 |
| 21-22 | 55 | 33 | 10 | 0 | 0 | 0 |
| 23-24 | 59 | 39 | 17 | 0 | 0 | 0 |
| 25-26 | 62 | 48 | 24 | 0 | 0 | 0 |
| 27-28 | 65 | 52 | 30 | 0 | 0 | 0 |
| 29-30 | 67 | 55 | 34 | 7 | 0 | 0 |
| 31-32 | 69 | 58 | 39 | 16 | 0 | 0 |
| 33-34 | 71 | 61 | 42 | 21 | 0 | 0 |
| 35-36 | 73 | 63 | 46 | 26 | 3 | 0 |
| 37-38 | 74 | 65 | 49 | 30 | 8 | 0 |
| 39-40 | 75 | 67 | 51 | 33 | 15 | 0 |
| 41-43 | 77 | 68 | 54 | 37 | 20 | 0 |
| 44-46 | 79 | 70 | 57 | 41 | 25 | 0 |
| 47-49 | 80 | 72 | 60 | 45 | 34 | 6 |
| 50-55 | 82 | 76 | 64 | 50 | 38 | 14 |
| 56-59 | 84 | 79 | 68 | 55 | 45 | 27 |
| 60-65 | 85 | 80 | 70 | 58 | 48 | 32 |
| 66-70 | 86 | 82 | 71 | 62 | 53 | 38 |
| 71-75 | 87 | 83 | 73 | 65 | 56 | 42 |
| 76-80 | 88 | 84 | 75 | 67 | 59 | 46 |
| 81-90 | 89 | 85 | 77 | 69 | 62 | 49 |
| 91-99 | 90 | 87 | 79 | 73 | 66 | 55 |
| 100-109 | 91 | 89 | 82 | 76 | 70 | 61 |
| 110-119 | 92 | 90 | 84 | 78 | 73 | 65 |

| Remainder as percentage of prior consideration | 0-6 | 7-12 | 13-18 | 19-24 | 25-30 | 31-36 |
|---|-----|------|-------|-------|-------|-------|
| 120-134 | 93 | 91 | 85 | 80 | 75 | 68 |
| 135-149 | 94 | 92 | 87 | 82 | 78 | 71 |
| 150-174 | 95 | 93 | 88 | 84 | 80 | 74 |
| 175-199 | 95 | 94 | 90 | 86 | 83 | 78 |
| 200-249 | 96 | 95 | 92 | 89 | 85 | 82 |
| 250-299 | 97 | 96 | 93 | 91 | 88 | 85 |
| 300 + | 97 | 97 | 95 | 93 | 90 | 88 |

(July 13, 1978, D.C. Law 2-91, § 204, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.
Section referred to in section. 47-3304.

§ 47-3306. Mayor authorized to develop tax return form.

The Mayor shall develop no later than thirty (30) days after the effective date the following:

- (a) a residential real property transfer tax return form or forms; and
- (b) regulations and procedures governing the filing of returns on a quarterly basis for transferors claiming any exemption under section 47-3303 whose volume of exempt transfers is such that it would be unduly burdensome to require the filing of a separate return for each such transfer. All returns required under this subchapter shall be filed on the forms and in the manner prescribed by the Mayor.

(July 13, 1978, D.C. Law 2-91, § 205, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.
Section referred to in sections. 47-3301, 47-3307, 47-3308.

§ 47-3307. Payment of tax.

(a) Except as provided in section 47-3302 (b) and section 47-3306 (b), within thirty (30) days after the execution of a deed or other document by which legal title to a property is transferred (unless the thirtieth (30th) day is a legal holiday, in which case the first day thereafter which is not a legal holiday), all transferors of legal title and all transferors of equitable title to such property, including all transferors claiming any exemption under section 47-3303, shall:

- (1) file with the Mayor a completed residential real property transfer tax return and any other information the Mayor requires; and
- (2) pay into a depository designated by the Mayor the full amount of the tax due under this subchapter, if any.

(b) Where a transfer qualifies under section 453 of the Internal Revenue Code (relating to the installment method), and where the tax imposed under this subchapter is five hundred dollars (\$500) or greater, the Mayor shall prescribe procedures and regulations providing for the payment of the tax in installments: Except, that the tax must be paid in full within three (3) years from the date of the transfer. (July 13, 1978, D.C. Law 2-91, § 206, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3308. Tax return.

(a) In the case of a transfer described in subsection (p) (2) of section 47-3303, each transferor shall include in the return required by section 47-3306, the current one hundred (100) percent assessed market value, as of the date of the like kind exchange. Whenever a return contains insufficient information as to the one hundred (100) percent assessed market value, the Mayor is authorized to make a reasonable determination thereof from the best information available.

(b) Where the property being transferred was received by the transferor by gift, the transferor's return must include the amount and kind of consideration given by the transferor's donor in acquiring such property, and said donor's basis for such property as of the date of the gift. If such information is not available, the Mayor shall make a determination thereof from the best information available.

(c) Where a transfer is exempt from the tax, the transferor's return shall only need to include sufficient information to establish the exemption claimed. The Mayor by regulation shall set forth what information is to be deemed sufficient to establish the exemption claimed.

(d) A transferor shall maintain documentation to support the information in the return for three (3) years after the date of the transfer. (July 13, 1978, D.C. Law 2-91, § 207, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3309. Return; assessment and collection; time of payment; penalties and interest; appeal.

To the extent applicable to the provisions and purposes of this title, the following sections shall apply for purposes of administration of this title: section 47-1564b (b), section 47-1586, section 47-1589, and section 47-1593. (July 13, 1978, D.C. Law 2-91, § 208, 24 DCR 9765.)

Emergency Act Amendment.

Legislative History of Law 2-91. See note to § 47-3301.

1978 — For temporary amendment of section, see sec. 4 of the Tax Return Confidentiality Emergency Act of 1978 (D.C. Act 2-288, Oct. 25, 1978, 25 DCR 4322).

§ 47-3310. Willful breach of warranty.

(a) If the Mayor or a court of competent jurisdiction in the District of Columbia determines that any warranty provided under section 47-3303 (a) has been willfully breached or intentionally dishonored and but for such warranty the transfer would have been subject to the tax, then the tax and any additions thereto that would have been due from the transferor shall become due and payable in the same manner as if such warranty never existed. The Mayor by regulation shall set forth the standards and administrative process to be followed for the determination by the Mayor that a warranty has been willfully breached or intentionally dishonored.

(b) If the Mayor determines that a warranty has been willfully breached or intentionally dishonored, in addition to any other penalties, the Mayor shall order the warrantor to do either of the following, at the option of the warrantee:

(1) make the repairs, which form the basis of the breach, to the satisfaction of the warrantee; or

(2) pay to the warrantee, after the receipt of two (2) estimates in writing from the warrantee, the full amount necessary to have the repairs made by some person other than the warrantor.

Where the transferor certified that the property meets the standards set forth in the applicable articles of chapters 1 and 2 of the Housing Regulations of the District of Columbia as set forth in section 47-3303 (a) (4) and where such certification was false or based on false information and the transferor knew or should have known of such falsification or false information, then the Mayor shall determine that the warranty, as provided by section 47-3303 (a) (1), has been willfully breached and the provisions of this subsection shall apply. (July 13, 1978, D.C. Law 2-91, § 209, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3311. Report by Mayor.

The Mayor shall report to the Council by February 1st of each year for the preceding fiscal year, the following information for the District of Columbia:

- (a) the number of transactions falling within each exemption provided by section 47-3303;
- (b) the sales prices for transactions falling within each exemption under section 47-3303;
- (c) the holding periods for all transactions subject to the tax imposed by this subchapter;
- (d) the sales prices for transactions subject to the tax imposed by this subchapter;
- (e) the average holding period for transactions subject to the tax imposed by this subchapter;
- (f) the average gain for transactions subject to the tax imposed by this subchapter;
- (g) the number of evictions caused by each transaction, if any; and
- (h) the Mayor shall require that the Department of Finance and Revenue provide for this report the following:

- (1) the number of unincorporated business tax returns filed by dealers in residential real property, and the states in which the returns were filed including the District of Columbia;
 - (2) the average number of transfers per return and the total from each jurisdiction; and
 - (3) the total amount of unincorporated business taxes paid by those engaged in the buying and selling of residential real property, and the average per return.
- (July 13, 1978, D.C. Law 2-91, § 210, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3312. Authorization to promulgate regulations.

The Mayor shall promulgate regulations to carry out the provisions of this subchapter. (July 13, 1978, D.C. Law 2-91, § 211, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

*Subchapter III. — Compulsory Recordation of Transfers of
Real Property*

§ 47-3313. Compulsory recordation.

(a) Within thirty (30) days after the execution of a deed or other document by which legal title to a real property is transferred, all transferees of said legal title shall record a fully acknowledged copy of said deed or other document, including the lot and square number of the real property transferred, with the Recorder of Deeds of the District of Columbia. If the thirtieth (30th) day is a legal holiday, the time for recording shall be extended to include the first day after the thirtieth (30th) day which is not a legal holiday.

(b) Whenever any portion of an instrument, which conveys or provides for the conveyance of equitable title to a real property, is transferred by or on behalf of a party to such instrument to a third party, then the party so transferring shall record, at the same time as provided by subsection (a) of this section, a fully acknowledged copy of said instrument, including the lot and square number of the real property transferred, with the Recorder of Deeds of the District of Columbia, and the third party shall record, at the same time as provided by subsection (a) of this section, with the Recorder of Deeds of the District of Columbia a fully acknowledged instrument, including the lot and square number of the property transferred, evidencing the transfer to himself (or herself or itself as the case may be). All subsequent transfers of equitable title made prior to the transfer of legal title shall be recorded by each subsequent transferee thereto, in the same manner and at the same time as provided in subsection (a) of this section. (July 13, 1978, D.C. Law 2-91, § 301, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 45-725, 47-3314, 47-3315.

§ 47-3314. Presumptions and burden of proof.

For the purpose of proper administration of this subchapter and to prevent evasion of the recordation requirements, the Mayor shall presume that all transfers, as described in section 47-3313, are required to be recorded. The burden shall be upon the person required to record to prove that a deed or any other document is exempt from the recordation requirement. (July 13, 1978, D.C. Law 2-91, § 302, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3315. Penalties for failure to record.

(a) Where a dealer fails to record, as required by section 47-3313, and such failure is due to negligence, there shall be imposed on said dealer, a penalty of twenty-five dollars (\$25.00) for each month or portion thereof that such failure continues, not to exceed two hundred fifty dollars (\$250.00).

(b) Any dealer who with the intent to evade the tax imposed in subchapter II of this chapter, knowingly fails to record, as required by section 47-3313, or who knowingly makes a false or misleading statement in connection with such recordation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one (1) year, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel in the name of the District of Columbia. The word "dealer", in addition to the meaning assigned to that term in subchapter I of this chapter, shall, for purposes of this subsection, include an officer or an employee of a corporation, or a member or an employee of a partnership, who is under a duty to perform the act in respect to which the violation occurs.

(c) Where a person other than a dealer fails to record, as required by section 47-3313, there shall be imposed on such person a penalty in the amount of ten dollars (\$10.00) for each month or portion thereof that such failure continues, not to exceed fifty dollars (\$50.00). Whenever it is shown by such person that failure to record was due to reasonable cause and was not due to knowing omission or neglect, the Mayor may waive part of or all of the penalty fee provided by this subsection. In every case of a partial or total waiver, the reason for the waiver shall be stated clearly on a public record determined by the Mayor.

(d) Any person other than a dealer, who with the intent to evade the tax imposed in subchapter II of this chapter, knowingly fails to record, as required by section 47-3313, or who knowingly makes a false or misleading statement in connection with such recordation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one (1) year, or both, together with cost of prosecution.

(e) The penalty fees provided under this section shall be collected at the same time and in the same manner and as a part of the deed recordation tax. If the transaction is exempt from the deed recordation tax, then the Mayor shall collect the fees in a manner prescribed by the Mayor.

(f) If the Mayor determines that a person has failed to record or has failed to pay any fee as required by this chapter, the procedures set forth in section 45-728 shall apply. (July 13, 1978, D.C. Law 2-91, § 303, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

*Subchapter IV. — Licensing of Dealers in Residential
Real Property*

§ 47-3316. Definitions.

For the purposes of this subchapter:

(a) The term “real estate broker” or “broker” shall have the same meaning as given the term “real estate broker” in section 45-1402.

(b) The term “real estate salesman” or “salesman” shall have the same meaning as given the term “real estate salesman” in section 45-1402.

(c) The term “firm”, unless otherwise indicated, means a partnership, copartnership, association, corporation (foreign or domestic) or unincorporated business.

(July 13, 1978, D.C. Law 2-91, § 401, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3317. Requirement of license.

On and after one hundred eighty (180) days from the effective date, it shall be unlawful in the District of Columbia for a dealer to transfer residential real property, other than property which is a dealer’s principal residence, without a license issued by the Commission. A dealer’s license shall be obtained by a person prior to a transfer which would cause the transferor to be deemed a dealer. When a person required by this subchapter to be licensed as a dealer fails to acquire a license, but demonstrates to the Mayor that such failure was due to reasonable cause and was not due to knowing omission or neglect, the Mayor may waive part or all of any penalty imposed for failure to acquire a license: Provided, that lack of knowledge as to any provision of this chapter shall not constitute reasonable cause. (July 13, 1978, D.C. Law 2-91, § 402, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3318. Application for license.

(a) A license to act as a dealer under the provisions of this subchapter shall not be issued to any person who has not applied for the license required by this subchapter or whose license to act as a dealer was revoked in the District of Columbia during the twelve (12) month period immediately preceding the date of the application for said license.

(b) Except as provided in subsection (e) of this section, the application of every firm for a license to be a dealer shall state:

(1) the address or addresses of the principal place or places of business for which the license is desired;

(2) a complete list of all former addresses where the applicant was engaged in any real estate business for a continuous period of at least thirty (30) days;

(3) the name and residence address of each employee, member, officer or associate who participates as a dealer in the applicant’s business of dealing in residential real property;

(4) in the case of a corporation, the application shall also state the name and address of each officer, director and registered agent. In the case of a firm other than a corporation, the application shall also state the name and address of each partner, associate, member or employee who is authorized to accept legal notice on behalf of the organization; and

(5) the address, including lot and square number, of each property located in the District of Columbia, which was transferred in whole or in part by or on behalf of the applicant during the twenty-four (24) month period immediately preceding the date of the application.

(c) Except as provided in subsection (e) of this section, the application of each individual associated with a firm for a license to be a dealer shall state:

(1) the full name and residence address of the applicant;

(2) the full name and business address of the firm with which such applicant is associated, the length of time such applicant has been so associated, and in what capacity; and

(3) the period of time, if any, during which said applicant was or has been engaged as a real estate broker, salesman, or dealer, together with a complete list of all former addresses where the applicant was so engaged for a period of thirty (30) days or more preceding the date of application.

(d) Except as provided in subsection (e) of this section, the application of each individual, not affiliated with a firm or other entity, for a license to be a dealer shall state the same information as required in subsection (c) paragraphs (1) and (2) of this section.

(e) Whenever any applicant for a license to be a dealer is licensed as a real estate broker or real estate salesman in the District of Columbia, such applicant shall not be required to repeat on the application for a dealer's license any information that the applicant has provided on an application for a broker's or salesman's license which is currently on file with the Commission. (July 13, 1978, D.C. Law 2-91, § 403, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3319. Issuance and display of license.

(a) The Commission shall issue a non-transferable license to each dealer qualifying for such under the provisions of this subchapter. A dealer's license shall be in such form and size as prescribed by the Commission. Every license shall show the name and address of the dealer to whom it is issued, and if applicable, the full name and address of the firm with which said dealer is associated. Each license shall have imprinted thereon the seal of the Commission, and such other matter as shall be prescribed by the Commission. All dealers shall display their licenses conspicuously in their places of business.

(b) No license shall be issued by the Commission to a firm unless every employee, member or officer who participates in such firm as a dealer is licensed as required by this subchapter. (July 13, 1978, D.C. Law 2-91, § 404, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3320. License expiration, fees and renewals.

(a) Every license to be a dealer shall expire on the anniversary date of its issuance.

(b) The fee for the initial dealers license shall be one hundred dollars (\$100).

(c) The annual fee for any renewal of a license shall be one hundred dollars (\$100) in the case of a dealer who transfers twenty (20) or more residential real properties during the twelve (12) months immediately preceding the written request for such renewal; seventy-five dollars (\$75) in the case of a dealer who transfers at least ten (10) but no more than nineteen (19) such properties during said period; fifty dollars (\$50) in the case of a dealer who transfers at least five (5) but not more than nine (9) such properties during said period; and twenty-five dollars (\$25) in the case of a dealer who transfers four (4) or fewer such properties during said period: Provided, that whenever a person licensed in the District of Columbia as a real estate broker or real estate salesman applies for an initial license to be a dealer or requests renewal thereof, the amount of the fee paid for the broker's or salesman's license shall be applied toward satisfaction of the fee for a dealer's license. In determining the number of transfers by a dealer during the twelve (12) months immediately preceding the transfer, all transfers made by the dealer (except the transfer of the dealer's principal residence) shall be considered, including transfers made by the dealer prior to being deemed as a dealer.

(d) Notwithstanding subsections (b) and (c) of this section, no fee shall be charged for any initial license or renewal thereof issued to any firm where all of the employees, members or officers who actively participate in the firm's business of dealing in residential real property have been issued a dealer's license.

(e) On written request of the applicant, upon receipt of the annual fee and in the absence of any reason warranting refusal, the Commission shall renew each dealer's license annually. The causes for suspension and revocation of a dealer's license as set forth in section 47-3323 shall serve as reasons warranting the Commission to refuse to renew a dealer's license. A dealer must also submit all facts necessary to keep all information in the initial application for a dealer's license accurate, complete, and current. An applicant who, on or before the applicable anniversary date, fails to file the written request to renew and to pay the appropriate renewal fee must comply with all the provisions of this subchapter applicable to a person making an initial application for a dealer's license.

(f) Upon a change in the location of the principal place of business of a dealer, said dealer shall give, in writing, notice of such change to the Commission. The Commission shall prescribe the time within which said notice must be received in order that said notice be considered as timely. At the time notice is given, said dealer must surrender the dealer's license to the Commission. Failure to notify the Commission or to return the license automatically cancels the dealer's license. When timely notice is given to the Commission, it may, without additional fee, issue a new dealer's license for the balance of the year, where applicable: Provided, that said dealer files a written request for such new license. (July 13, 1978, D.C. Law 2-91, § 405, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3321. Dealer's place of business and nonresident dealers.

(a) Except as provided in subsection (b) of this section, every dealer licensed under the provisions of this subchapter shall maintain a place of business in the District of Columbia. If a dealer maintains more than one place of business within the District of Columbia, a duplicate license shall be issued to such dealer for each additional office maintained. The fee charged for such duplicate license shall not exceed its cost to the District of Columbia.

(b) A nonresident of the District of Columbia may become a dealer by complying with all of the requirements of this title: Except, that such nonresident need not maintain a place of business within the District of Columbia.

(c) Every nonresident applicant for a dealer's license shall comply with the provisions of section 45-1410 (2). (July 13, 1978, D.C. Law 2-91, § 406, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3322. Suspension or revocation of license.

(a) Paragraphs (a), (b), (c), (j), (k), and (p) of section 45-1408 shall be applicable to dealers as causes for suspension or revocation of a dealer's license.

(b) In addition to subsection (a) of this section, the Commission, may, upon its own motion, and shall, upon the verified complaint in writing of any person (provided such complaint or such complainant together with evidence, documentary or otherwise, presented in connection therewith, establishes a prima facie case), investigate the conduct of any dealer. Within thirty (30) days after the receipt by the Commission of said verified complaint the Commission shall notify said complainant in writing as to its decision or other action taken with regard to the complaint. The Commission shall have the power at any time to suspend or to revoke a license issued under the provisions of this title: Provided, that in the case of a knowing violation of subsections (b) (1) and (2) of this section, the Commission shall at minimum suspend the license for not less than one (1) month: Provided, further, that the dealer shall be prohibited from signing any additional contracts for the sale of houses for that period, if the dealer has:

(1) failed to file the return and pay the excise tax as required by subchapter II of this chapter, or knowingly made any false or misleading statement in connection therewith;

(2) failed to record a transfer as required by subchapter III of this chapter, or to pay the deed recordation tax, or has made a false or misleading statement in connection with such recordation or recordation tax;

- (3) failed to comply with or honor a warranty given pursuant to section 47-3303 (a) (1) or (a) (2);
- (4) violated any of the Commission's regulations pertaining to dealers;
- (5) made a false or misleading statement concerning a certification, given pursuant to paragraph (3) or (4) of section 47-3303 (a); or
- (6) violated any of the provisions of section 47-3323 (b).
- (July 13, 1978, D.C. Law 2-91, § 407, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3323. Fraudulent transfers by dealers.

(a) A contract or agreement for the transfer of property shall be rescindable by the transferee, without penalty, at any time before legal title to the property is transferred, if, at the time of the contract or agreement:

(1) the transferor is a dealer; and

(2) the transferor was not duly licensed as a dealer in the District of Columbia.

(b) A contract or agreement for the transfer of property shall be rescindable by the transferor, without penalty, at any time before legal title to the property is transferred, if the transferor is not a dealer, if the transferee is a dealer, and if the transferee:

(1) fails to furnish the transferor with a fully executed copy of any contract pertaining to the transfer. The Mayor, within thirty (30) days after the effective date, shall develop procedures governing said contract; or

(2) fails, at the time of the execution of the contract, to furnish a notice to the transferor of his or her right to cancel the contract within a period of time to be determined by the Mayor. The Mayor, within thirty (30) days after the date of enactment, shall develop forms and procedures governing such notice; or

(3) fails, before furnishing copies of such notice of cancellation to the transferor, to fully complete said notice form; or

(4) includes in a contract, a confession of judgment or a waiver of any of the rights to which the transferor is entitled under this section, including specifically his or her right to cancel the transfer; or

(5) misrepresents to the transferor the transferor's right to cancel; or

(6) fails or refuses to honor any valid notice of cancellation.

(c) Section 45-1409 shall apply as the procedures for suspension or revocation of a dealer's license. (July 13, 1978, D.C. Law 2-91, § 408, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Section referred to in sections. 47-3320, 47-3322.

§ 47-3324. Mayor to notify Commission.

Whenever it comes to the attention of the Mayor that a dealer has failed to file a return and pay the excise tax and other amounts related thereto as provided in subchapter II of this chapter or has failed to record a deed or other document as required by subchapter III of this chapter or to pay the deed recordation tax, or has made a false or misleading statement in connection with such recordation, recordation tax or excise tax, the Mayor shall, in addition to other enforcement procedures, report such failure to the Commission. (July 13, 1978, D.C. Law 2-91, § 409, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3325. Report by Commission.

The Commission shall report in writing to the Council annually, no later than the first Tuesday in September, on its activities regarding the licensing and disciplining of dealers under the provisions of this subchapter. The report shall include at least the following information for the twelve (12) months immediately preceding the report:

- (a) the number of new applications;
 - (b) the number of initial dealer licenses granted, and renewals thereof;
 - (c) the number of dealer licenses suspended or revoked and the reason for such action; and
 - (d) the number and amount of any recoveries on bonds and the reasons therefor.
- (July 13, 1978, D.C. Law 2-91, § 410, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3326. Mayor and Commission to promulgate regulations.

- (a) The Mayor shall promulgate regulations to carry out the purposes of this subchapter.
- (b) Within one (1) year from the effective date, the Commission, after notice and hearings, shall issue regulations establishing standards for the conduct of those soliciting residential real property to insure against harassment, nuisance, misrepresentation, and other unwarranted or abusive practices.
- (c) For a violation of the regulations promulgated pursuant to subsection (b) of this section, a solicitor of residential property shall, in addition to any other penalties, be penalized as provided in section 45-1416. (July 13, 1978, D.C. Law 2-91, § 411, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

Subchapter V.—Miscellaneous Provisions

§ 47-3327. Report of costs and revenues.

- (a) For the first, second, and third year after the effective date and not later than the date on which the Mayor's budget proposal is transmitted to the Council, the Mayor shall report to the Council the total and the net cost of administering the provisions of this chapter. The report shall indicate, by department or branch of the District of Columbia government, the cost of administering each title of this chapter. The report shall also indicate the revenues realized under subchapters II, III, and IV of this chapter (including fees, fines, penalties, and excises);
- (b) The report required in subsection (a) of this section shall be in addition to any other report or information that is or shall be required. (July 13, 1978, D.C. Law 2-91, § 501, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

§ 47-3328. Promulgation of regulations to be consistent with Administrative Procedure Act.

The Mayor shall promulgate regulations necessary to carry out the provisions of this chapter and to develop necessary forms and procedures. All regulations promulgated by the Mayor pursuant to this chapter, including those to be promulgated within thirty (30) days after the effective date shall be done so consistent with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). If compliance with such act would extend promulgation of the regulations beyond thirty (30) days after the effective date then the time for promulgating the regulations shall be extended to thirty (30) days after compliance with the District of Columbia Administrative Procedure Act. (July 13, 1978, D.C. Law 2-91, § 502, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

*Subchapter VI.—Severability—Repealers***§ 47-3329. Severability — Effect of repealers.**

(a) The provisions of this chapter are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the chapter or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the chapter or any part is inapplicable had been specifically exempted.

(b) The repeal or amendment by this chapter of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date or under any suit or proceeding had or commenced before the effective date; but all rights and liabilities under such law shall continue and may be enforced in the same manner and to the same extent as if the repeal or amendment had not been made. (July 13, 1978, D.C. Law 2-91, § 601, 24 DCR 9765.)

Legislative History of Law 2-91. See note to § 47-3301.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

| Chap. | Sec. |
|--------------------------------------|--------|
| 3. Laws Remaining in Force | 49-301 |
| 4. Law Revision Commission | 49-401 |

CHAPTER 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

NOTES TO DECISIONS

Common law remains in force. — This section provides that all consistent common law in force in Maryland at the time of the cession of the District of Columbia remains in force as part of the law of the District unless repealed or modified by statute. *O'Connor v. United States* (D.C. 1979, 399 A.2d 21).

This section has been adopted from the common law. *Parker v. United States* (D.C. 1979, 406 A.2d 1275).

Court did not consider argument that Superior Court has vestigial common-law authority under this section to issue writs ad testificandum extraterritorially. *Christian v. United States* (D.C. 1978, 394 A.2d 1).

Cited in *Lomax v. Spriggs* (D.C. 1979, 404 A.2d 943).

CHAPTER 4.—LAW REVISION COMMISSION

| Sec. |
|--|
| 49-401. Establishment of Commission — Composition — Terms of office — Administrative provisions. |

§ 49-401. Establishment of Commission — Composition — Terms of office — Administrative provisions.

* * * * *

(g) Members and the Chairman of the Commission shall be entitled to receive \$125 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission, except no member or Chairman shall receive more than \$5,000 for the performance of such duties during any twelve-month period.

(h) While away from their homes or regular places of business in the performance of the duties of the Commission, members, including the Chairman, of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(i) The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel shall be appointed without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Commission may appoint a Director. Such appointment shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Director shall serve at the pleasure of the Commission and shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1. The Commission may also appoint a General Counsel without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, to serve at the pleasure of the Commission. The General Counsel shall be entitled to receive compensation at the same rate as the Director and shall be responsible solely to the Commission.

Persons appointed to the staff of the Commission shall be appointed solely on the basis of their ability to perform the duties of the Commission without regard to political party affiliation. Employees of the Commission shall be regarded as employees of the District of Columbia Government.

* * * * *

(As amended Mar. 3, 1979, D.C. Law 2-139, § 3205 (ddd), 25 DCR 5740.)

Effect of Amendment.

1979 — Act Mar. 3, 1979, D.C. Law 2-139, amended section by substituting “\$125” for “\$100” in subsection (g), by deleting “in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code” at the end of subsection (h), and by adding “or equivalent compensation pursuant to the provisions of subchapter XI of chapter 3A of title 1” at the end of the fifth sentence at the first paragraph of subsection (i).

Emergency Act Amendment.

1979 — For temporary deletion of the amendment made

by D.C. Law 2-139, see sec. 2(l) of the District of Columbia Government Comprehensive Merit Personnel Act Emergency Act of 1979 (D.C. Act 3-139, Dec. 21, 1979, 27 DCR 1).

Legislative History of Law 2-139. See note to § 1-331.1.

Section referred to in section. 1-366.1.

Cross reference. For effective date of D.C. Law 2-139, see § 1-366.1.

Parallel Reference Tables

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

| Date | D.C. Law | Section | D.C. Code Supp. | | Date | D.C. Law | Section | D.C. Code Supp. |
|-------------------|----------|---------|---------------------------|--|-------------------|----------|---------|---------------------|
| 1978 | | | | | 1978 | | | |
| Feb. 2 | 2-39 | 1-3 | 1-226 note. | | Mar. 16 | 2-52 | 3 | omitted. |
| Feb. 22 | 2-40 | 1 | omitted. | | | 2-53 | 1-17 | 1-224 note. |
| | 2-40 | 2 | 44-216, 216.1, 217, 218. | | | 2-54 | 101 | 45-1681 note. |
| | | | | | | 2-54 | 102 | 45-1681. |
| | 2-40 | 3-5 | omitted. | | | 2-54 | 201 | 45-1682. |
| Feb. 25 | 2-41 | 1 | omitted. | | | 2-54 | 202 | 45-1683. |
| | 2-41 | 2 | 40-101, 103. | | | 2-54 | 203 | 45-1684. |
| | 2-41 | 3 | omitted. | | | 2-54 | 204 | 45-1685. |
| | 2-41 | 4 | 40-201. | | | 2-54 | 205 | 45-1686. |
| | 2-41 | 5 | omitted. | | | 2-54 | 206 | 45-1687. |
| | 2-42 | 1-7 | omitted. | | | 2-54 | 207 | 45-1688. |
| Feb. 28 | 2-43 | 1 | 32-341 note. | | | 2-54 | 208 | 45-1689. |
| | 2-43 | 2 | 32-341. | | | 2-54 | 209 | 45-1690. |
| | 2-43 | 3 | 32-342. | | | 2-54 | 210 | 45-1691. |
| | 2-43 | 4 | 32-343. | | | 2-54 | 211 | 45-1692. |
| | 2-43 | 5 | 32-344. | | | 2-54 | 212 | 45-1693. |
| | 2-43 | 6 | 32-345. | | | 2-54 | 213 | 45-1694. |
| | 2-43 | 7 | 32-346. | | | 2-54 | 214 | 45-1695. |
| | 2-43 | 8 | 32-347. | | | 2-54 | 215 | 45-1696. |
| | 2-43 | 9 | 32-348. | | | 2-54 | 216 | 45-1697. |
| | 2-43 | 10 | 32-349. | | | 2-54 | 301 | 45-1698. |
| | 2-43 | 11 | 32-350. | | | 2-54 | 302 | 45-1699. |
| | 2-43 | 12 | 32-351. | | | 2-54 | 303 | 45-1699.1. |
| | 2-43 | 13 | 32-352. | | | 2-54 | 304 | 45-1699.2. |
| | 2-43 | 14 | 32-353. | | | 2-54 | 305 | 45-1699.3. |
| | 2-43 | 15 | 32-354. | | | 2-54 | 306 | 45-1699.4. |
| | 2-43 | 16 | 32-355. | | | 2-54 | 401 | 45-1699.5. |
| | 2-43 | 17 | omitted. | | | 2-54 | 501 | 45-1699.6. |
| | 2-44 | 1-4 | 47-632 note. | | | 2-54 | 502 | 45-1699.7. |
| | 2-45 | 1 | 47-659 note. | | | 2-54 | 601 | 45-1699.8. |
| | 2-45 | 2 | 47-659. | | | 2-54 | 602 | 45-1699.9. |
| | 2-45 | 3 | 47-659.1. | | | 2-54 | 603 | 45-1699.10. |
| | 2-45 | 4 | 47-1567g. | | | 2-54 | 604 | 45-1699.11. |
| | 2-45 | 5 | 47-642. | | | 2-54 | 605 | 5-1281. |
| | 2-45 | 6 | 47-659.2. | | | 2-54 | 701 | 45-1699.12. |
| | 2-45 | 7 | 47-659.3. | | | 2-54 | 702 | 45-1699.13. |
| | 2-45 | 8 | 47-659.4. | | | 2-54 | 703 | 45-1699.14. |
| | 2-45 | 9 | 47-659.5. | | | 2-54 | 704 | 45-1699.15. |
| | 2-45 | 10 | 47-650 Rep. | | | 2-54 | 705 | 45-1699.16. |
| | 2-45 | 11 | 47-659.7. | | | 2-54 | 706 | 45-1699.17. |
| | 2-45 | 12 | 47-659.6. | | | 2-54 | 707 | 45-1699.18. |
| Mar. 10 | 2-46 | 1 | 1-146d note. | | | 2-54 | 801 | 45-1699.19. |
| | 2-46 | 2 | 1-181 to 187, 191 to 195. | | | 2-54 | 802 | 45-1699.20. |
| | | | | | | 2-54 | 803 | 45-1699.21. |
| | 2-46 | 3 | omitted. | | | 2-54 | 804 | 5-732b, 45-1699.22. |
| Mar. 8 | 2-47 | 1-8 | omitted. | | | 2-54 | 805 | 45-1699.23. |
| Mar. 9 | 2-48 | 1-8 | omitted. | | | 2-54 | 901 | 45-1699.24. |
| | 2-49 | 1-8 | omitted. | | | 2-54 | 902 | 45-1699.25. |
| Mar. 10 | 2-50 | 1 | omitted. | | | 2-54 | 903 | 45-1631 to |
| | 2-50 | 2 | 1-1104. | | | | | 45-1674 Rep. |
| | 2-50 | 3 | omitted. | | | 2-54 | 904 | 45-1699.26. |
| | 2-51 | 1-8 | omitted. | | | 2-54 | 905 | omitted. |
| Mar. 16 | 2-52 | 1 | omitted. | | | 2-54 | 906 | 45-1699.27. |
| | 2-52 | 2 | 47-1105. | | | 2-55 | 1 | omitted. |

TABLE 4A.— ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

| Date | D.C. Law | Section | D.C. Code Supp. | | Date | D.C. Law | Section | D.C. Code Supp. |
|-------------------|-------------|---------|--------------------------------|--|-------------------|-------------|---------|---|
| 1978 | | | | | 1978 | | | |
| Mar. 16 | 2-55 | 2 | 40-103. | | Mar. 16 | 2-60 | 2 | 40-103. |
| | 2-55 | 3 | 40-103. | | | 2-60 | 3 | omitted. |
| | 2-55 | 4 | omitted. | | | 2-61 | 1 | omitted. |
| | 2-55 | 5 | 40-103. | | | 2-61 | 2 | 12-302, 28:1— 103, 29-921. |
| | 2-55 | 6, 7 | omitted. | | | 2-61 | 3 | omitted. |
| | 2-56 | 1-7 | omitted. | | | 2-62 | 1 | omitted. |
| | 2-57 | 1 | omitted. | | | 2-62 | 2 | 6-1802, 1812, 1813, 1814, 1816, 1817, 1820, 1821, 1831, 1846, 1849, 1851, 1852, 1861, 1878. |
| | 2-57 | 2 | 47-306. | | | | | |
| | 2-57 | 3 | 47-1564c. | | | | | |
| | 2-57 | 4 | 47-2615. | | | | | |
| | 2-57 | 5 | 47-306.1. | | | | | |
| | 2-57 | 6 | omitted. | | | | | |
| | 2-58 | 100 | 47-3101 note. | | | | | |
| | 2-58 | 101 | 47-3101. | | | | | |
| | 2-58 | 102 | 47-3102. | | | 2-62 | 3 | omitted. |
| | 2-58 | 103 | 47-3103. | | | 2-63 | 1-5 | 9-301 note. |
| | 2-58 | 104 | 47-3104. | | | 2-64 | 1 | 6-521 note. |
| | 2-58 | 105 | 47-3105. | | | 2-64 | 2 | 6-521. |
| | 2-58 | 106 | 47-3106. | | | 2-64 | 3 | 6-522. |
| | 2-58 | 201 | 47-1571a. | | | 2-64 | 4 | 6-523. |
| | 2-58 | 202 | 47-1574b. | | | 2-64 | 5 | 6-524. |
| | 2-58 | 301 | 47-3107. | | | 2-64 | 6 | 6-525. |
| | 2-58 | 302 | 47-3108. | | | 2-64 | 7 | 6-526. |
| | 2-58 | 303 | 47-3109. | | | 2-64 | 8 | 6-527. |
| | 2-58 | 304 | 47-3110. | | | 2-64 | 9 | 6-528. |
| | 2-58 | 305 | 47-3111. | | | 2-64 | 10 | 6-529. |
| | 2-58 | 306 | 47-3112. | | | 2-64 | 11 | 6-530. |
| | 2-58 | 401 | 47-3113. | | | 2-64 | 12 | 6-531. |
| | 2-58 | 402 | omitted. | | | 2-64 | 13 | 6-532. |
| | 2-59 | 1 | 2-941 note. | | | 2-64 | 14 | omitted. |
| | 2-59 | 2 | 2-941. | | Apr. 6 | 2-65 | 1-6 | omitted. |
| | 2-59 | 3 | 2-942. | | | 2-66 | 101-505 | 32-304 note. |
| | 2-59 | 4 | 2-943. | | | 2-67 | 1 | 2-499 note. |
| | 2-59 | 5 | 2-944. | | | 2-67 | 2 | 2-499. |
| | 2-59 | 6 | 2-945. | | | 2-67 | 3 | 2-499.1. |
| | 2-59 | 7 | 2-946. | | | 2-67 | 4 | 2-499.2. |
| | 2-59 | 8 | 2-947. | | | 2-67 | 5 | 2-499.3. |
| | 2-59 | 9 | 2-948. | | | 2-67 | 6 | 2-499.4. |
| | 2-59 | 10 | 2-949. | | | 2-67 | 7 | 2-499.5. |
| | 2-59 | 11 | 2-950. | | | 2-67 | 8 | 2-499.6. |
| | 2-59 | 12 | 2-951. | | | 2-67 | 9 | 2-499.7. |
| | 2-59 | 13 | 2-952. | | | 2-67 | 10 | 2-499.8. |
| | 2-59 | 14 | 2-953. | | | 2-67 | 11 | 2-499.9. |
| | 2-59 | 15 | 2-954. | | | 2-67 | 12 | 2-499.10. |
| | 2-59 | 16 | 2-955. | | | 2-67 | 13 | 2-499.11. |
| | 2-59 | 17 | 2-956. | | | 2-67 | 14 | 2-499.12. |
| | 2-59 | 18 | 2-957. | | | 2-67 | 15 | 2-499.13. |
| | 2-59 | 19 | 2-958. | | | 2-67 | 16 | 2-499.14. |
| | 2-59 | 20 | 2-959. | | | 2-67 | 17 | 2-499.15. |
| | 2-59 | 21 | 2-960. | | | 2-67 | 18 | 2-499.16. |
| | 2-59 | 22 | 2-961. | | | 2-67 | 19 | omitted. |
| | 2-59 | 23 | 2-962. | | | 2-67 | 20 | 2-499.17. |
| | 2-59 | 24 | 2-963. | | | 2-67 | 21 | omitted. |
| | 2-59 | 25 | 2-911 to 2-931 Rep., 2-964. | | | 2-68 | 1-3 | 1-226 note. |
| | 2-59 | 26 | 2-965. | | | 2-69 | 1-3 | omitted. |
| | 2-60 | 1 | omitted. | | | 2-69 | 4 | 6-502. |
| | | | | | | 2-69 | 5 | 40-303. |

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

| Date | D.C. Law | Section | D.C. Code Supp. | Date | D.C. Law | Section | D.C. Code Supp. |
|-------------------|-------------|----------|--------------------------|-------------------|-------------|---------|-------------------------------|
| 1978 | | | | 1978 | | | |
| Apr. 6 | 2-69 | 6 | omitted. | June 30 | 2-89 | 3 | omitted. |
| Apr. 18 | 2-70 | 1-20 | omitted. | | 2-90 | 1-4 | 1-226 note. |
| | 2-70 | 21 | 2-601, 606, 608, 609. | July 13 | 2-91 | 100 | 47-3301 note. |
| | 2-70 | 22 | omitted. | | 2-91 | 101 | 47-3301. |
| | 2-71 | 1-8 | omitted. | | 2-91 | 201 | 47-3302. |
| | 2-72 | 1 | omitted. | | 2-91 | 202 | 47-3303. |
| | 2-72 | 2 | 1-257. | | 2-91 | 203 | 47-3304. |
| | 2-72 | 3 | 47-2305. | | 2-91 | 204 | 47-3305. |
| | 2-72 | 4 | omitted. | | 2-91 | 205 | 47-3306. |
| | 2-73 | 1 | omitted. | | 2-91 | 206 | 47-3307. |
| | 2-73 | 2 | 47-1209, 1557 note. | | 2-91 | 207 | 47-3308. |
| | 2-73 | 3 | 25-103, 111, 124. | | 2-91 | 208 | 47-3309. |
| | 2-73 | 4 | omitted. | | 2-91 | 209 | 47-3310. |
| Apr. 20 | 2-74 | 1 | 6-2301 note. | | 2-91 | 210 | 47-3311. |
| | 2-74 | 2 | 6-2301. | | 2-91 | 211 | 47-3312. |
| | 2-74 | 3 | 6-2302. | | 2-91 | 301 | 47-3313. |
| | 2-74 | 4 | 6-2303. | | 2-91 | 302 | 47-3314. |
| | 2-74 | 5 | omitted. | | 2-91 | 303 | 47-3315. |
| Apr. 28 | 2-75 | 1 | omitted. | | 2-91 | 304 | 45-723, 725. |
| | 2-75 | 2 | 6-2004, 2006. | | 2-91 | 401 | 47-3316. |
| | 2-75 | 3 | omitted. | | 2-91 | 402 | 47-3317. |
| May 18 | 2-76 | 1 | omitted. | | 2-91 | 403 | 47-3318. |
| | 2-76 | 2, 3 | 4-823 note. | | 2-91 | 404 | 47-3319. |
| | 2-76 | 4 | omitted. | | 2-91 | 405 | 47-3320. |
| | 2-76 | 5 | 4-823 note. | | 2-91 | 406 | 47-3321. |
| | 2-76 | 6 | omitted. | | 2-91 | 407 | 47-3322. |
| | 2-77 | 1-4 | omitted. | | 2-91 | 408 | 47-3323. |
| June 13 | 2-78 | 1 | omitted. | | 2-91 | 409 | 47-3324. |
| | 2-78 | 2 | 19-316. | | 2-91 | 410 | 47-3325. |
| | 2-78 | 3 | omitted. | | 2-91 | 411 | 47-3326. |
| | 2-79 | 1-6 | omitted. | | 2-91 | 501 | 47-3327. |
| June 20 | 2-80 | 1 | omitted. | | 2-91 | 502 | 47-3328. |
| | 2-80 | 2, 3 | 31-1501 note. | | 2-91 | 503 | 47-651 Rep. |
| | 2-80 | 4 | 31-1501a. | | 2-91 | 504 | 45-1699.6. |
| | 2-80 | 5 | 31-1501 note. | | 2-91 | 601 | 47-3329. |
| | 2-80 | 6, 7 | omitted. | Aug. 1 | 2-91 | 701 | omitted. |
| | 2-81 | 1 | 5-328 note. | | 2-92 | 1-8 | omitted. |
| | 2-81 | 2 | 5-328. | | 2-93 | 1-8 | omitted. |
| | 2-81 | 3 | 5-329. | Aug. 2 | 2-94 | 1-8 | omitted. |
| | 2-81 | 4 | 5-330. | | 2-95 | 1 | omitted. |
| | 2-81 | 5 | 5-331. | | 2-95 | 2 | 12-101. |
| | 2-81 | 6 | 5-332. | | 2-95 | 3 | 20-1501. |
| | 2-81 | 7 | 5-333. | | 2-95 | 4 | 12-101 note, 20-1501 note. |
| | 2-81 | 8 | 5-334. | | 2-95 | 5 | omitted. |
| | 2-81 | 9 | 5-335. | | 2-96 | 1 | omitted. |
| | 2-81 | 10 to 16 | omitted. | | 2-96 | 2 | 31-122. |
| June 30 | 2-82 | 1-3 | omitted. | | 2-96 | 3 | omitted. |
| | 2-83 | 1-8 | omitted. | Aug. 12 | 2-97 | 1-3 | 1-226 note. |
| | 2-84 | 1-8 | omitted. | Aug. 17 | 2-98 | 1-3 | 1-226 note. |
| | 2-85 | 1-8 | omitted. | | 2-99 | 1-3 | 1-226 note. |
| | 2-86 | 1-8 | omitted. | | 2-100 | 1 | 4-1001 note. |
| | 2-87 | 1-8 | omitted. | | 2-100 | 2 | 4-1001. |
| | 2-88 | 1-3 | 47-1207 note. | | 2-100 | 3 | 4-1002. |
| | 2-89 | 1 | omitted. | | 2-100 | 4 | 4-1003. |
| | 2-89 | 2 | 32-1320, 1343, 1351. | | 2-100 | 5 | 4-1004. |
| | | | | | 2-100 | 6 | 4-1005. |
| | | | | | 2-100 | 7 | 4-1006. |

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

| Date | D.C. Law | Section | D.C. Code Supp. | Date | D.C. Law | Section | D.C. Code Supp. |
|--------------------|-------------|---------|--|--------------------|-------------|----------|-------------------|
| 1978 | | | | 1978 | | | |
| Aug. 17 | 2-100 | 8 | 4-1007. | Sept. 12 | 2-104 | 502, 503 | omitted. |
| | 2-100 | 9 | 4-1008. | | 2-104 | 504 | 40-810. |
| | 2-100 | 10 | 4-1009. | | | | |
| | 2-100 | 11 | omitted. | | 2-104 | 505 | 40-603.1. |
| Aug. 18 | 2-101 | 1 | omitted. | | 2-104 | 601 | 40-301, 603, 605. |
| | 2-101 | 2 | 1-1101, 1103, 1104, 1105, 1107, 1109, 1110, 1111, 1114, 1115. | | 2-104 | 602-604 | omitted. |
| | | | | | 2-104 | 701 | 40-1126. |
| | | | | | 2-104 | 702 | 40-1127. |
| | | | | Sept. 13 | 2-105 | 1 | omitted. |
| | | | | | 2-105 | 2 | 7-615. |
| | 2-101 | 3 | 1-1121, 1133 to 1136, 1138, 1141, 1151, 1152, 1156, 1161, 1171 to 1173, 1175, 1176, 1181, 1182, 1191. | | 2-105 | 3 | 7-616. |
| | | | | | 2-105 | 4 | omitted. |
| | | | | | 2-106 | 1-5 | 1-902 note. |
| | 2-101 | 4 | 31-101. | | 2-107 | 1 | 2-2501 note. |
| | 2-101 | 5, 6 | omitted. | | 2-107 | 2 | 2-2501. |
| Sept. 9 | 2-102 | 1 | 4-1101 note. | | 2-107 | 3 | 2-2502. |
| | 2-102 | 2 | 4-1101. | | 2-107 | 4 | 2-2503. |
| | 2-102 | 3 | 4-1102. | | 2-107 | 5 | 2-2504. |
| | 2-102 | 4 | omitted. | | 2-107 | 6 | 2-2505. |
| Sept. 12 | 2-103 | 1 | 45-1801 note. | | 2-107 | 7 | 2-2506. |
| | 2-103 | 2 | 45-1801. | | 2-107 | 8 | 2-2507. |
| | 2-103 | 3 | 45-1802. | | 2-107 | 9 | 2-2501 note. |
| | 2-103 | 4 | 45-1803. | | 2-107 | 10 | omitted. |
| | 2-103 | 5 | 45-1804. | Sept. 22 | 2-108 | 1-3 | 1-226 note. |
| | 2-103 | 6 | 45-1805. | | 2-109 | 1 | 2-2601 note. |
| | 2-103 | 7 | omitted. | | 2-109 | 2 | 2-2601. |
| | 2-104 | 100 | 40-1101 note. | | 2-109 | 3 | 2-2602. |
| | 2-104 | 101 | 40-1101. | | 2-109 | 4 | 2-2603. |
| | 2-104 | 102 | 40-1102. | | 2-109 | 5 | 2-2604. |
| | 2-104 | 103 | 40-1103. | | 2-109 | 6 | Org. Or. 38 Rep. |
| | 2-104 | 104 | 40-1104. | | 2-109 | 7 | omitted. |
| | 2-104 | 105 | 40-1105. | | 2-110 | 1 | omitted. |
| | 2-104 | 106 | 40-1106. | Sept. 23 | 2-110 | 2 | 5-1202. |
| | 2-104 | 107 | 40-1107. | | 2-110 | 3 | omitted. |
| | 2-104 | 108 | 40-1108. | | 2-111 | 1 | omitted. |
| | 2-104 | 201 | 40-1109. | | 2-111 | 2 | 1-262a, 31-1122. |
| | 2-104 | 202 | 40-1110. | | 2-111 | 3 | 31-1721 Rep. |
| | 2-104 | 203 | 40-1111. | | 2-111 | 4 | omitted. |
| | 2-104 | 204 | 40-1112. | Sept. 29 | 2-112 | 1 | 32-361 note. |
| | 2-104 | 205 | 40-1113. | | 2-112 | 2 | 32-361. |
| | 2-104 | 206 | 40-1114. | | 2-112 | 3 | 32-362. |
| | 2-104 | 301 | 40-1115. | | 2-112 | 4 | 32-363. |
| | 2-104 | 302 | 40-1116. | | 2-112 | 5 | 32-364. |
| | 2-104 | 303 | 40-1117. | | 2-112 | 6 | 32-365. |
| | 2-104 | 304 | 40-1118. | | 2-112 | 7 | omitted. |
| | 2-104 | 305 | 40-1119. | | 2-113 | 1 | omitted. |
| | 2-104 | 306 | 40-1120. | | 2-113 | 2 | 45-1699.6. |
| | 2-104 | 401 | 40-1121. | | 2-113 | 3 | omitted. |
| | 2-104 | 402 | 40-1122. | Oct. 4 | 2-114 | 1 | 47-3201 note. |
| | 2-104 | 403 | 40-1123. | | 2-114 | 2 | 47-3201. |
| | 2-104 | 404 | 40-1124. | | 2-114 | 3 | 47-3202. |
| | 2-104 | 405 | 40-1125. | | 2-114 | 4 | 47-3203. |
| | 2-104 | 501 | 40-603. | | 2-114 | 5 | 47-3204. |
| | | | | | 2-114 | 6 | 47-3205. |
| | | | | | 2-114 | 7 | 47-3206. |
| | | | | | 2-114 | 8 | 47-3207. |
| | | | | | 2-114 | 9 | 47-3208. |
| | | | | | 2-114 | 10 | 47-3209. |

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA—Continued

| Date | D.C. Law | Section | D.C. Code Supp. | | Date | D.C. Law | Section | D.C. Code Supp. |
|-------------------|-------------|---------|--|--|------------------|-------------|---------|--|
| 1978 | | | | | 1979 | | | |
| Oct. 4 | 2-114 | 11 | 47-3210. | | Mar. 3 | 2-128 | 6 | 36-805. |
| | 2-114 | 12 | 47-3211. | | | 2-128 | 7 | omitted. |
| | 2-114 | 13 | 47-3212. | | | 2-129 | 1 | omitted. |
| | 2-114 | 14 | 47-3213. | | | 2-129 | 2 | 46-301, 303, 306, 307, 309, 310, 313, 315, 319, 327 Rep. |
| | 2-114 | 15 | 47-3214. | | | | | |
| | 2-114 | 16 | 47-3215. | | | | | |
| | 2-114 | 17 | 47-3216. | | | | | |
| | 2-114 | 18 | 47-3217. | | | 2-129 | 3 | omitted. |
| | 2-114 | 19 | omitted. | | | 2-129 | 4 | 46-301 note, 46-303 note, 46-306 note, 46-307 note, 46-309 note, 46-310 note, 46-313 note, 46-315 note, 46-319 note, 46-327 note. |
| | 2-115 | 1 | omitted. | | | | | |
| | 2-115 | 2 | 28-3818. | | | | | |
| | 2-115 | 3 | 28 appx. | | | | | |
| | 2-115 | 4, 5 | omitted. | | | | | |
| | 2-116 | 1 | omitted. | | | | | |
| | 2-116 | 2 | 47-801a, 801c, 801f. | | | | | |
| | 2-116 | 3-5 | omitted. | | | | | |
| Oct. 13 | 2-117 | 1 | omitted. | | | | | |
| | 2-117 | 2 | 29-903, 927, 952. | | | 2-129 | 5 | omitted. |
| | 2-117 | 3, 4 | omitted. | | | 2-130 | 1 | omitted. |
| | 2-118 | 1-7 | omitted. | | | 2-130 | 2 | 47-622.1 |
| | 2-119 | 1 | omitted. | | | 2-130 | 3 | 47-632, 633, 646. |
| | 2-119 | 2 | 47-645. | | | 2-130 | 4 | 47-632a. |
| | 2-119 | 3 | 47-655. | | | 2-130 | 5 | 45-1698. |
| | 2-119 | 4 | 47-656. | | | 2-130 | 6 | 47-1567g. |
| | 2-119 | 5 | 47-662. | | | 2-130 | 7 | 47-659, 659.1, 659.2. |
| | 2-119 | 6 | omitted. | | | | | |
| | 2-120 | 1 | omitted. | | | 2-130 | 8 | 47-649.1. |
| | 2-120 | 2, 3 | 35-701. | | | 2-130 | 9 | omitted. |
| | 2-120 | 4 | 35-703. | | | 2-131 | 1 | omitted. |
| | 2-120 | 5 | 35-705. | | | 2-131 | 2 | 37-103. |
| | 2-120 | 6-8 | 35-705b. | | | 2-131 | 3 | omitted. |
| | 2-120 | 9 | 35-705c, 705d. | | | 2-132 | 1 | omitted. |
| | 2-120 | 10 | 35-721. | | | 2-132 | 2 | 31-1731. |
| | 2-120 | 11 | omitted. | | | 2-132 | 3 | omitted. |
| | 2-121 | 1 | omitted. | | | 2-133 | 1 | omitted. |
| | 2-121 | 2 | 5-732b, 45-1699.6, 1699.19 to 1699.22. | | | 2-133 | 2 | 1-226 note. |
| | | | | | | 2-133 | 3 | 6-812. |
| | | | | | | 2-133 | 4 | omitted. |
| | 2-121 | 3 | omitted. | | | 2-134 | 101 | 1-163 note, 1-1002 note. |
| | 2-122 | 1-3 | omitted. | | | | | |
| 1979 | | | | | | 2-135 | 1 | 45-1901 note. |
| Mar. 3 | 2-123 | 1 | omitted. | | | 2-135 | 101 | 45-1901. |
| | 2-123 | 2 | 35-1308. | | | 2-135 | 102 | 45-1902. |
| | 2-123 | 3 | omitted. | | | 2-135 | 201 | 45-1903. |
| | 2-124 | 1-9 | omitted. | | | 2-135 | 202 | 45-1904. |
| | 2-125 | 1 | omitted. | | | 2-135 | 203 | 45-1905. |
| | 2-125 | 2 | 5-1281 note. | | | 2-135 | 204 | 45-1906. |
| | 2-125 | 3 | 5-1281. | | | 2-135 | 205 | 45-1907. |
| | 2-125 | 4 | omitted. | | | 2-135 | 301 | 45-1908. |
| | 2-126 | 1-8 | omitted. | | | 2-135 | 302 | 45-1909. |
| | 2-127 | 1-8 | omitted. | | | 2-135 | 303 | 45-1910. |
| | 2-128 | 1 | 36-801 note. | | | 2-135 | 304 | 45-1911. |
| | 2-128 | 2 | 36-801. | | | 2-135 | 305 | 45-1912. |
| | 2-128 | 3 | 36-802. | | | 2-135 | 306 | 45-1913. |
| | 2-128 | 4 | 36-803. | | | 2-135 | 307 | 45-1914. |
| | 2-128 | 5 | 36-804. | | | 2-135 | 308 | 45-1915. |
| | | | | | | 2-135 | 401 | 45-1916. |

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| 1979 Mar. 3 | 2-135 | 402 | 45-1917. | 1979 Mar. 3 | 2-136 | 807 | 6-1639 note, 6-1648. |
| | 2-135 | 403 | 45-1918. | | 2-137 | 101 | 6-1651 note. |
| | 2-135 | 404 | 45-1919. | | 2-137 | 102 | 6-1651. |
| | 2-135 | 405 | 45-1920. | | 2-137 | 103 | 6-1652. |
| | 2-135 | 406 | 45-1921. | | 2-137 | 201 | 6-1653. |
| | 2-135 | 407 | 45-1922. | | 2-137 | 301 | 6-1654. |
| | 2-135 | 408 | 45-1923. | | 2-137 | 302 | 6-1655. |
| | 2-135 | 409 | 45-1924. | | 2-137 | 303 | 6-1656. |
| | 2-135 | 410 | 45-1925. | | 2-137 | 304 | 6-1657. |
| | 2-135 | 411 | 45-1926. | | 2-137 | 305 | 6-1658. |
| | 2-135 | 501 | 45-1927. | | 2-137 | 306 | 6-1659. |
| | 2-135 | 502 | 45-1928. | | 2-137 | 307 | 6-1660. |
| | 2-135 | 503 | 45-1929. | | 2-137 | 308 | 6-1661. |
| | 2-135 | 504 | 45-1930. | | 2-137 | 309 | 6-1662. |
| | 2-135 | 601 | 45-1931. | | 2-137 | 310 | 6-1663. |
| | 2-135 | 602 | 45-1932. | | 2-137 | 311 | 6-1664. |
| | 2-135 | 603 | omitted. | | 2-137 | 312 | 6-1665. |
| | 2-136 | 1 | 6-1611 note. | | 2-137 | 313 | 6-1666. |
| | 2-136 | 101 | 6-1611. | | 2-137 | 314 | 6-1667. |
| | 2-136 | 102 | 6-1612. | | 2-137 | 401 | 6-1668. |
| | 2-136 | 103 | 6-1613. | | 2-137 | 402 | 6-1669. |
| | 2-136 | 104 | 6-1614. | | 2-137 | 403 | 6-1670. |
| | 2-136 | 201 | 6-1615. | | 2-137 | 404 | 6-1671. |
| | 2-136 | 202 | 6-1616. | | 2-137 | 405 | 6-1672. |
| | 2-136 | 203 | 6-1617. | | 2-137 | 406 | 6-1673. |
| | 2-136 | 204 | 6-1618. | | 2-137 | 407 | 6-1674. |
| | 2-136 | 205 | 6-1619. | | 2-137 | 408 | 6-1675. |
| | 2-136 | 206 | 6-1620. | | 2-137 | 409 | 6-1676. |
| | 2-136 | 207 | 6-1621. | | 2-137 | 410 | 6-1677. |
| | 2-136 | 301 | 6-1622. | | 2-137 | 411 | 6-1678. |
| | 2-136 | 302 | 6-1623. | | 2-137 | 412 | 6-1679. |
| | 2-136 | 303 | 6-1624. | | 2-137 | 413 | 6-1680. |
| | 2-136 | 304 | 6-1625. | | 2-137 | 501 | 6-1681. |
| | 2-136 | 305 | 6-1626. | | 2-137 | 502 | 6-1682. |
| | 2-136 | 306 | 6-1627. | | 2-137 | 503 | 6-1683. |
| | 2-136 | 401 | 6-1628. | | 2-137 | 504 | 6-1684. |
| | 2-136 | 402 | 6-1629. | | 2-137 | 505 | 6-1685. |
| | 2-136 | 403 | 6-1630. | | 2-137 | 506 | 6-1686. |
| | 2-136 | 404 | 6-1631. | | 2-137 | 507 | 6-1687. |
| | 2-136 | 405 | 6-1632. | | 2-137 | 508 | 6-1688. |
| | 2-136 | 501 | 6-1633. | | 2-137 | 509 | 6-1689. |
| | 2-136 | 502 | 6-1634. | | 2-137 | 510 | 6-1690. |
| | 2-136 | 503 | 6-1635. | | 2-137 | 511 | 6-1691. |
| | 2-136 | 504 | 6-1636. | | 2-137 | 512 | 6-1692. |
| | 2-136 | 505 | 6-1637. | | 2-137 | 513 | 6-1693. |
| | 2-136 | 601 | 6-1638. | | 2-137 | 514 | 6-1694. |
| | 2-136 | 602 | 6-1639. | | 2-137 | 601 | 6-1695. |
| | 2-136 | 603 | 6-1640. | | 2-137 | 602 | 6-1696. |
| | 2-136 | 701 | 6-1641. | | 2-137 | 603 | 6-1697. |
| | 2-136 | 702 | 6-1642. | | 2-137 | 604 | 21-1101, |
| | 2-136 | 801 | 6-1643. | | | | 21-1102 to |
| | 2-136 | 802 | 6-1644. | | | | 21-1108A Rep., |
| | 2-136 | 803 | 6-1645. | | | | 21-1113 Rep., |
| | 2-136 | 804 | 6-1646. | | | | 1114, 1115, |
| | 2-136 | 805 | 1-226 note, 12-301, 14-307, 16-2359. | | | | 21-1116 to 21- 2118 Rep., 21- 1120 to 21-1123 |
| | 2-136 | 806 | 6-1647. | | | | |

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| | 2-137 | 605 | 6-1698. | | 2-139 | 1105 | 1-341.5. |
| | 2-137 | 606 | 6-1699. | | 2-139 | 1106 | 1-341.6. |
| | 2-138 | 1-4 | 47-632 note. | | 2-139 | 1107 | 1-341.7. |
| | 2-138 | 5 | 47-631. | | 2-139 | 1108 | 1-341.8. |
| | 2-138 | 6 | 47-632 note. | | 2-139 | 1109 | 1-341.9. |
| | 2-139 | 101 | 1-331.1 note. | | 2-139 | 1110 | 1-341.10. |
| | 2-139 | 102 | 1-331.1. | | 2-139 | 1111 | 1-341.11. |
| | 2-139 | 103 | 1-331.2. | | 2-139 | 1112 | 1-341.12. |
| | 2-139 | 201 | 1-332.1. | | 2-139 | 1113 | 1-341.13. |
| | 2-139 | 202 | 1-332.2. | | 2-139 | 1114 | 1-341.14. |
| | 2-139 | 203 | 1-332.3. | | 2-139 | 1201 | 1-342.1. |
| | 2-139 | 204 | 1-332.4. | | 2-139 | 1202 | 1-342.2. |
| | 2-139 | 205 | 1-332.5. | | 2-139 | 1203 | 1-342.3. |
| | 2-139 | 206 | 1-332.6. | | 2-139 | 1301 | 1-343.1. |
| | 2-139 | 301 | 1-333.1. | | 2-139 | 1401 | 1-344.1. |
| | 2-139 | 401 | 1-334.1. | | 2-139 | 1402 | 1-344.2. |
| | 2-139 | 402 | 1-334.2. | | 2-139 | 1403 | 1-344.3. |
| | 2-139 | 403 | 1-334.3. | | 2-139 | 1404 | 1-344.4. |
| | 2-139 | 404 | 1-334.4. | | 2-139 | 1405 | 1-344.5. |
| | 2-139 | 405 | 1-334.5. | | 2-139 | 1501 | 1-345.1. |
| | 2-139 | 406 | 1-334.6. | | 2-139 | 1502 | 1-345.2. |
| | 2-139 | 407 | 1-334.7. | | 2-139 | 1503 | 1-345.3. |
| | 2-139 | 408 | 1-334.8. | | 2-139 | 1504 | 1-345.4. |
| | 2-139 | 501 | 1-335.1. | | 2-139 | 1505 | 1-345.5. |
| | 2-139 | 502 | 1-335.2. | | 2-139 | 1601 | 1-346.1. |
| | 2-139 | 503 | 1-335.3. | | 2-139 | 1602 | 1-346.2. |
| | 2-139 | 504 | 1-335.4. | | 2-139 | 1603 | 1-346.3. |
| | 2-139 | 601 | 1-336.1. | | 2-139 | 1701 | 1-347.1. |
| | 2-139 | 602 | 1-336.2. | | 2-139 | 1702 | 1-347.2. |
| | 2-139 | 603 | 1-336.3. | | 2-139 | 1703 | 1-347.3. |
| | 2-139 | 604 | 1-336.4. | | 2-139 | 1704 | 1-347.4. |
| | 2-139 | 701 | 1-337.1. | | 2-139 | 1705 | 1-347.5. |
| | 2-139 | 702 | 1-337.2. | | 2-139 | 1706 | 1-347.6. |
| | 2-139 | 703 | 1-337.3. | | 2-139 | 1707 | 1-347.7. |
| | 2-139 | 704 | 1-337.4. | | 2-139 | 1708 | 1-347.8. |
| | 2-139 | 705 | 1-337.5. | | 2-139 | 1709 | 1-347.9. |
| | 2-139 | 706 | 1-337.6. | | 2-139 | 1710 | 1-347.10. |
| | 2-139 | 707 | 1-337.7. | | 2-139 | 1711 | 1-347.11. |
| | 2-139 | 708 | 1-337.8. | | 2-139 | 1712 | 1-347.12. |
| | 2-139 | 801 | 1-338.1. | | 2-139 | 1713 | 1-347.13. |
| | 2-139 | 801A | 1-338.2. | | 2-139 | 1714 | 1-347.14. |
| | 2-139 | 901 | 1-339.1. | | 2-139 | 1715 | 1-347.15. |
| | 2-139 | 902 | 1-339.2. | | 2-139 | 1716 | 1-347.16. |
| | 2-139 | 903 | 1-339.3. | | 2-139 | 1801 | 1-348.1. |
| | 2-139 | 904 | 1-339.4. | | 2-139 | 1802 | 1-348.2. |
| | 2-139 | 905 | 1-339.5. | | 2-139 | 1803 | 1-348.3. |
| | 2-139 | 906 | 1-339.6. | | 2-139 | 1901 | 1-349.1. |
| | 2-139 | 907 | 1-339.7. | | 2-139 | 1902 | 1-349.2. |
| | 2-139 | 908 | 1-339.8. | | 2-139 | 2001 | 1-350.1. |
| | 2-139 | 1001 | 1-340.1. | | 2-139 | 2002 | 1-350.2. |
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| | 2-139 | 1101 | 1-341.1. | | 2-139 | 2004 | 1-350.4. |
| | 2-139 | 1102 | 1-341.2. | | 2-139 | 2005 | 1-350.5. |
| | 2-139 | 1103 | 1-341.3. | | 2-139 | 2006 | 1-350.6. |
| | 2-139 | 1104 | 1-341.4. | | 2-139 | 2007 | 1-350.7. |
| | | | | | 2-139 | 2008 | 1-350.8. |
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| | 2-139 | 2202 | 1-352.2. | | 2-139 | 2704 | 1-357.4. |
| | 2-139 | 2301 | 1-353.1. | | 2-139 | 2705 | 1-357.5. |
| | 2-139 | 2302 | 1-353.2. | | 2-139 | 2801 | 1-358.1. |
| | 2-139 | 2303 | 1-353.3. | | 2-139 | 2802 | 1-358.2. |
| | 2-139 | 2304 | 1-353.4. | | 2-139 | 2803 | 1-358.3. |
| | 2-139 | 2305 | 1-353.5. | | 2-139 | 2804 | 1-358.4. |
| | 2-139 | 2306 | 1-353.6. | | 2-139 | 2901 | 1-359.1. |
| | 2-139 | 2307 | 1-353.7. | | 2-139 | 3001 | 1-360.1. |
| | 2-139 | 2308 | 1-353.8. | | 2-139 | 3101 | 1-361.1. |
| | 2-139 | 2309 | 1-353.9. | | 2-139 | 3102 | 1-361.2. |
| | 2-139 | 2310 | 1-353.10. | | 2-139 | 3103 | 1-361.3. |
| | 2-139 | 2311 | 1-353.11. | | 2-139 | 3104 | 1-361.4. |
| | 2-139 | 2312 | 1-353.12. | | 2-139 | 3105 | 1-361.5. |
| | 2-139 | 2313 | 1-353.13. | | 2-139 | 3106 | 1-361.6. |
| | 2-139 | 2314 | 1-353.14. | | 2-139 | 3107 | 1-361.7. |
| | 2-139 | 2315 | 1-353.15. | | 2-139 | 3108 | 1-361.8. |
| | 2-139 | 2316 | 1-353.16. | | 2-139 | 3201 | 1-362.1. |
| | 2-139 | 2317 | 1-353.17. | | 2-139 | 3202 | 1-362.2. |
| | 2-139 | 2318 | 1-353.18. | | 2-139 | 3203 | 1-362.3. |
| | 2-139 | 2319 | 1-353.19. | | 2-139 | 3204 | 31-101, 31-102 |
| | 2-139 | 2320 | 1-353.20. | | | | Rep., 105, 1402, |
| | 2-139 | 2321 | 1-353.21. | | | | 31-1501 note, |
| | 2-139 | 2322 | 1-353.22. | | | | 1522, 1714, 1716, |
| | 2-139 | 2323 | 1-353.23. | | | | 31-1717 Rep., |
| | 2-139 | 2324 | 1-353.24. | | | | 1735. |
| | 2-139 | 2325 | 1-353.25. | | 2-139 | 3205 | 1-128, 1-213 to |
| | 2-139 | 2326 | 1-353.26. | | | | 1-213b Rep., 251, |
| | 2-139 | 2327 | 1-353.27. | | | | 254, 1-260 Rep., |
| | 2-139 | 2328 | 1-353.28. | | | | 262, 1-310a Rep., |
| | 2-139 | 2329 | 1-353.29. | | | | 1-313 Rep., 1-314 |
| | 2-139 | 2330 | 1-353.30. | | | | Rep., 1-316 Rep., |
| | 2-139 | 2331 | 1-353.31. | | | | 1-320 Rep., 1-321 |
| | 2-139 | 2332 | 1-353.32. | | | | Rep., 518, 1104, |
| | 2-139 | 2333 | 1-353.33. | | | | 1105, 1106, 1151, |
| | 2-139 | 2334 | 1-353.34. | | | | 1171, 1181, 1182, |
| | 2-139 | 2335 | 1-353.35. | | | | 1354, Org. Order |
| | 2-139 | 2336 | 1-353.36. | | | | No. 127 Rep., |
| | 2-139 | 2337 | 1-353.37. | | | | 2-103, 408, 1012, |
| | 2-139 | 2338 | 1-353.38. | | | | 1234, 1236, 1726, |
| | 2-139 | 2339 | 1-353.39. | | | | 1808, 2224, 2225, |
| | 2-139 | 2340 | 1-353.40. | | | | 2415, 3-105, 5-105, |
| | 2-139 | 2341 | 1-353.41. | | | | 426, 617, 713, |
| | 2-139 | 2342 | 1-353.42. | | | | 6-1203, 1712, |
| | 2-139 | 2343 | 1-353.43. | | | | 1912, 8-209, 25- |
| | 2-139 | 2344 | 1-353.44. | | | | 104, 25-104a |
| | 2-139 | 2345 | 1-353.45. | | | | Rep., 29-935, |
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| | 2-139 | 2513 | 1-355.2. | | | | 206, 45-702, 703, |
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| | 2-139 | 2602 | 1-356.2. | | | | 113a, 646, 2809, |
| | 2-139 | 2701 | 1-357.1. | | | | 49-401. |
| | 2-139 | 2702 | 1-357.2. | | 2-139 | 3206 | 1-362.4. |

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| | | | | | 2-150 | 1 | omitted. |
| | | | | | 2-150 | 2 | 47-1551c. |
| | 2-139 | 3208 | 1-362.6. | | 2-150 | 3 | 47-1551c note. |
| | 2-139 | 3301 | 1-363.1. | Mar. 6 | 2-151 | 1-3 | 1-226 note. |
| | 2-139 | 3401 | 1-364.1. | | 2-152 | 1 | 44-214.1. |
| | 2-139 | 3501 | 1-365.1. | | 2-152 | 2 | 44-214a note, 44-214.1 to 44-214.6. |
| | 2-139 | 3601 | omitted. | | | | omitted. |
| | 2-139 | 3602 | 1-366.1. | | 2-152 | 3 | omitted. |
| | 2-139 | 3603 | 1-366.2. | | 2-153 | 1 | 1-1531 note, 1-1611 note. |
| | 2-140 | 1 | omitted. | | | | 1-1611. |
| | 2-140 | 2 | 28-3307 note. | | 2-153 | 2 | 1-1612. |
| | 2-140 | 3 | 6-2263. | | 2-153 | 3 | 1-1531 to 1539.3. |
| | 2-140 | 4 | omitted. | | 2-153 | 4 | 1-244. |
| | 2-141 | 1-7 | omitted. | | 2-153 | 5 | 1-1504, 1-1506 Rep., 1602, 1603, 1605. |
| | 2-142 | 1 | omitted. | | 2-153 | 6 | omitted. |
| | 2-142 | 2 | 1-362.7. | | | | 36-901 note. |
| | 2-143 | 1 | 31-2101 note. | | 2-153 | 7 | 36-901. |
| | 2-143 | 2 | 31-2101. | | 2-154 | 1 | 36-902. |
| | 2-143 | 3 | 31-2102. | | 2-154 | 2 | 36-903. |
| | 2-143 | 4 | 31-2103. | | 2-154 | 3 | omitted. |
| | 2-143 | 5 | 31-2104. | | 2-154 | 4 | omitted. |
| | 2-143 | 6 | 31-2105. | | 2-154 | 5 | 36-122. |
| | 2-143 | 7 | 31-2106. | | 2-154 | 3 | 36-122 note. |
| | 2-144 | 1 | 5-821 note. | | 2-154 | 4 | 36-127. |
| | 2-144 | 2 | 5-821. | | 2-154 | 5 | 36-127.1. |
| | 2-144 | 3 | 5-822. | | 2-155 | 6 | omitted. |
| | 2-144 | 4 | 5-823. | | 2-155 | 1 | 40-111 note. |
| | 2-144 | 5 | 5-824. | | 2-155 | 2 | 40-111. |
| | 2-144 | 6 | 5-825. | | 2-155 | 3 | 40-112. |
| | 2-144 | 7 | 5-826. | | 2-156 | 4 | 40-113. |
| | 2-144 | 8 | 5-827. | | 2-156 | 5 | 40-603. |
| | 2-144 | 9 | 5-828. | | 2-156 | 6 | 47-2602. |
| | 2-144 | 10 | 5-829. | | 2-156 | 7 | 40-114. |
| | 2-144 | 11 | 5-830. | | 2-156 | 8 | omitted. |
| | 2-144 | 12 | 5-831. | | 2-157 | 1 | omitted. |
| | 2-144 | 13 | 5-832. | | 2-157 | 2 | 47-1564c. |
| | 2-144 | 14 | 5-833. | | 2-157 | 3 | 47-1631. |
| | 2-144 | 15 | omitted. | | 2-157 | 4 | 47-1551c, 1557a, 1557b, 1561, 1561d, 1561e, 1564 to 1564c, 1567d, 1580a, 1580b, 1586 to 1586l, 1586n, 1589, 1589a, 1591, 1591d, 1591e. |
| | 2-144 | 16 | 5-834. | | 2-157 | 5 | 47-1551c. |
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